

2701
No. 13010

United States
Court of Appeals
for the Ninth Circuit.

POTLATCH OIL & REFINING COMPANY, a
Corporation, and JEAN P. GERLOUGH,
STANLEY H. HODGMAN and ROY E.
LARSON, as Trustees of That Certain Trust
Known as Inland Empire Oil and Gas Syndi-
cate, a Common Law Trust,

Appellants,

vs.

THE OHIO OIL COMPANY, a Corporation,
Appellee.

Transcript of Record
In Two Volumes

Volume I
(Pages 1 to 368)

Appeal from the United States District Court,
for the District of Montana.

FILED

66-2-1951

PAUL F. JOHNSON CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
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In the District Court of the United States in and
for the District of Montana, Great Falls
Division

Civil No. 956

POTLATCH OIL AND REFINING COMPANY,
a Corporation, and JEAN P. GERLOUGH,
STANLEY H. HODGMAN and ROY E.
LARSON, as Trustees of That Certain Trust
Known as INLAND EMPIRE OIL AND
GAS SYNDICATE, a Common Law Trust,
Plaintiffs,

vs.

THE OHIO OIL COMPANY, a Corporation,
Defendant.

Be It Remembered, that on May 2, 1947, a Transcript of Removal consisting of a Complaint, Petition for Removal, Demurrer and Order Granting Removal, was duly filed herein, in the words and figures following, to wit: [2*]

* Page numbering appearing at foot of page of original Reporter's Transcript of Record.

In the District Court of the Ninth Judicial District
of the State of Montana, in and for the County
of Toole

Civil No. 956

POTLATCH OIL AND REFINING COMPANY,
a Corporation, and JEAN P. GERLOUGH,
STANLEY H. HODGMAN, and ROY E.
LARSON, as Trustees of That Certain Trust
Known as INLAND EMPIRE OIL AND GAS
SYNDICATE, a Common Law Trust,

Plaintiffs,

vs.

THE OHIO OIL COMPANY, a Corporation,
Defendant.

COMPLAINT

The Plaintiffs complain of the Defendant and
for cause of action allege:

I.

That at all of the times hereinafter referred to,
the Plaintiff Potlatch Oil and Refining Company
was and now is a corporation duly created, organized
and existing under and by virtue of the laws
of the State of Montana.

II.

That at all of the times hereinafter referred to
the Defendant The Ohio Oil Company, was and
now is a corporation duly created, organized and
existing under and by virtue of the laws of the

State of Ohio and duly authorized and licensed to engage in business, as a corporation, within the State of Montana.

III.

That at all times on the 15th day of June, A.D. 1922, and thereafter, for approximately five years, the Troy-Sweetgrass Oil Syndicate was a business trust, commonly known as a common law trust, duly created and organized and existing under the laws of the State of Montana, and as such was engaged in business within the State of Montana, as a trust estate, under the name and style of Troy-Sweetgrass Oil Syndicate. [3]

IV.

That at all of the times hereinafter mentioned Inland Empire Oil and Gas Syndicate was and now is a business trust, commonly known as a common law trust, duly created, organized and existing under the laws of the State of Montana and as such was and is engaged in business within the State of Montana, as a trust estate, under the name and style of Inland Empire Oil and Gas Syndicate, and that Jean P. Gerlough, B. H. Hornby, and Stanley H. Hodgman are the duly appointed, qualified and acting managing trustees of said trust estate.

V.

That on or about the 15th day of June, A.D. 1922, pursuant to oral negotiations and agreements theretofore had, said Troy-Sweetgrass Oil Syndicate and the defendant, The Ohio Oil Company, made

and entered into a certain writing denominated "Operating Agreement" and a certain writing denominated "Assignment," a true and correct copy of which said "Operating Agreement" is hereto annexed marked "Exhibit A" and by this reference incorporated in and made a part hereof, and a true and correct copy of which aforesaid "Assignment" is hereto annexed marked "Exhibit B" and by this reference incorporated in and made a part hereof. That the making and entering into aforesaid "Operating Agreement" and aforesaid "Assignment" were done at the solicitation of Defendant and constituted substantially part and parcel of the one transaction. That said "Operating Agreement" and said "Assignment" were written and prepared by the Defendant, The Ohio Oil Company, and its officers and attorneys and the language thereof was and is the language of said Defendant corporation and its officers and attorneys and that before the said "Operating Agreement" and "Assignment" were reduced to writing it was, among other things, orally understood and expressly agreed between the parties thereto that the share of Troy Sweetgrass Oil Syndicate [4] of the costs and expenses incident to the drilling, development and operation of the lands described in said "Operating Agreement" for the production of oil and gas chargeable against the share of said syndicate of the oil and gas production from the described lands would be restricted and limited exclusively to the cost of the actual drilling itself of the wells at their locations on said lands except the expense of

the drilling of the first well which was to be borne solely and wholly by the Defendant, and the placing of said wells in condition to deliver the oil and gas production therefrom at their respective locations upon said land plus the actual cost of the equipment located wholly within and upon the said lands and the actual cost of the installation of said equipment and repairs and replacement of said equipment and that all other costs of operating said lands and producing and marketing the oil and gas therefrom would be the sole expense of and wholly chargeable to the Defendant alone. The Defendant, The Ohio Oil Company, thereupon promised to reduce the said terms of said oral agreements to writing in form of formal written agreement to be signed by the parties as evidence of said oral agreements, and thereafter Defendant prepared aforesaid written "Operating Agreement" and "Assignment" and prior to the signing thereof the Defendant directed the attention of the said Troy-Sweetgrass Oil Syndicate to the following express provisions of paragraph "III" of said "Operating Agreement," to wit, "but in no case shall said party of the first part be finally held or charged beyond its share or interest in the production and equipment from, in or upon said lands," as expressing the aforesaid oral agreement of the said Troy-Sweetgrass Oil Syndicate and the Defendant limiting and restricting the said expenses chargeable against the said syndicate, as aforesaid, and, at the time, said Defendant stated and represented to the said Troy-Sweetgrass Oil Syndicate that the purpose of said

express provisions was to express the true intent to limit expenses chargeable against said syndicate to the cost of the actual drilling [5] itself of wells at their locations on said lands, except the expense of the drilling of the first well which was to be borne wholly and solely by the defendant, and the placing of said wells in condition to deliver the oil and gas production therefrom, at their respective locations upon said lands, plus the actual cost of the equipment located wholly within said lands and the actual cost of installation of said equipment and of repairs and replacement of said equipment and that defendant so interpreted and construed said express provisions in connection with all terms of said "Operating Agreement" and "Assignment" and upon such statement and representation by defendant, and it then knowing that Troy-Sweetgrass Oil Syndicate believed and relied upon same, and with such mutual understanding and construction of said agreement as to the limited and restricted expenses, as aforesaid, chargeable to said syndicate under said "Operating Agreement" and "Assignment" and "Operating Agreement" and "Assignment" were thereupon signed by the Troy-Sweetgrass Oil Syndicate and the Defendant, respectively.

VI.

That pursuant to the terms aforesaid "Operating Agreement" and "Assignment" the Defendant, The Ohio Oil Company, assumed and took possession and control of the lands and of the oil and gas leases described therein and assumed the control

and management of the said lands and leases for the purpose of the drilling, development, and operation thereof for oil and gas purposes and of the marketing of the oil and gas which thereafter might be produced in, upon and from said lands and at all times since on or about the said 15th day of June, A.D. 1922, to and including the 31st day of January, A.D. 1943, the said Defendant corporation had and maintained possession of said lands and had and maintained sole and exclusive control and management of the said lands and leases for the drilling, development and operation thereof for oil and gas purposes, including the marketing of the oil and gas produced in, upon and from said lands, and of all equipment in connection therewith.

VII.

That subsequent to the 15th day of June, A.D. 1922, the Defendant corporation commenced the drilling of an exploratory well for the discovery and production of oil and gas at a location upon [6] the lands described in aforesaid "Operating Agreement" and "Assignment" and thereafter discovered oil in commercial quantities in said well and thereafter continued the work of drilling, developing and operating said lands for oil and gas until on or about January 31, 1943, upon which latter date it sold, assigned and conveyed to the Texas Company all of the rights and interests of said Defendant in, to and under said "Operating Agreement" and "Assignment" and in and to the lands described therein.

VIII.

That on or about the 1st day of June, A.D. 1923, said Troy-Sweetgrass Oil Syndicate assigned, transferred and conveyed to The Inland Empire Oil and Gas Syndicate an undivided one-half of the then interest of said Troy-Sweetgrass Oil Syndicate in the said oil and gas leases and "Operating Agreement" insofar as same pertained to the Southwest Quarter (SW $\frac{1}{4}$) of Section Three (3) and Southeast Quarter (SE $\frac{1}{4}$) of Section four (4), Township 35 North, Range 2 West, Montana Principal Meridian, commonly known as the "Baker Lease." That notice of the acquisition by Inland Empire Oil and Gas Syndicate of aforesaid interest from Troy-Sweetgrass Oil Syndicate was given to the Defendant, The Ohio Oil Company on or about the 2nd day of June, 1923, and at all times since the said Defendant has recognized the ownership of said interest by Inland Empire Oil and Gas Syndicate.

IX.

That on or about the 18th day of August, A.D. 1923, the aforesaid Troy-Sweetgrass Oil Syndicate assigned and set over, transferred and conveyed unto Plaintiff Potlatch Oil and Refining Company all of the remaining undivided interest of the said Troy-Sweetgrass Oil Syndicate in aforesaid lands and in the oil and gas leases embracing said lands and in and to the aforesaid "Operating Agreement." That since the acquisition by Plaintiffs, respectively, of aforesaid interests the respective interests of the Defendant and of the Plaintiffs,

Potlatch Oil and Refining Company and Inland Empire Oil and Gas Syndicate therein and thereto were and are in undivided 55% interest in the Defendant, The Ohio Oil Company, and an undivided 22½% interest in the Inland Empire Oil and [7] Gas Syndicate and an undivided 22½% interest in the Potlatch Oil and Refining Company, insofar as same pertain to the aforesaid three hundred and twenty acres of land known as the "Baker Lease" and a 55% interest in the Defendant and a 45% interest in the Plaintiff Potlatch Oil and Refining Company therein and thereof insofar as same pertain to the remainder of said lands. That notice of the acquisition by Potlatch Oil and Refining Company of aforesaid interest from the Troy-Sweetgrass Oil Syndicate was given to the Defendant, The Ohio Oil Company, on or about the 20th day of August, A.D. 1923, and at all times since the said Defendant has recognized the ownership of said interest of said Potlatch Oil and Refining Company.

X.

That the aforesaid lands have been at all times since the drilling of the aforesaid first exploratory well drilled thereon producing and now are producing oil and gas in commercial quantities and that the exclusive possession of all of the oil and gas so produced was, during the time Defendant was possessed of said lands, marketed or otherwise disposed of exclusively under the sole management and control of the Defendant, The Ohio Oil Company.

XI.

That all proceeds from the sale and marketing and disposition of oil and gas produced from said lands during Defendant's possession of the lands were received in the first instance by the Defendant, The Ohio Oil Company, and that, contrary to the express agreement of the parties and of the provisions of aforesaid "Operating Agreement," the Defendant improperly held and improperly charged the Plaintiffs beyond their share and interest in the production and equipment from in or upon said lands in the Defendant, during the period of its time of possession, management and control of the drilling, development and operation of said lands for oil and gas, deducted from the Plaintiffs' shares of the [8] proceeds from oil and gas, marketed and appropriated by Defendant from said lands, monies representing items of expense that in no manner represented costs of actual drilling itself of the wells or actual cost of equipment in or upon said lands, or actual costs of installation of said equipment or repairs or replacements of said equipment and in addition thereto, Defendant improperly charged the shares of Plaintiffs in the proceeds of oil and gas with interest at the rate of eight (8%) per cent per annum on the amounts of said improper charges in an amount known to the Defendant and unknown to the Plaintiffs. That in addition to charges improperly made, as aforesaid, the Defendant corporation also made excessive and unreasonable charges for equipment and expenses of exploration, development and operation of said

lands, in an exact amount known to the Defendant corporation and unknown to Plaintiffs and improperly charged interest at the rate of eight (8%) per cent per annum on said excessive and unreasonable charges; and Defendant also improperly, erroneously and wrongfully charged Plaintiffs, as alleged, "overhead expenses" of Defendant, a sum of money equal to approximately $41\frac{1}{2}\%$ to the total amount of money which Defendant claimed it had expended in attempting to perform the terms of said "Operating Agreement."

XII.

That contrary to the express terms and provisions of said "Operating Agreement" and instead of selling the oil produced in and from the aforesaid lands or paying or accounting to Plaintiffs for their shares of said oil at the prevailing market price at the wells for said oil, the said Defendant purchased and appropriated the oil so produced to its own use and allowed the Plaintiffs credits for their shares of the oil so produced in amounts, respectively, varying from 10 cents a barrel to 20 cents a barrel below the prevailing market price for oil at the wells, thereby depriving the Plaintiffs of their just shares of the proceeds of said oil based upon the market price prevailing at the wells in an exact amount [9] known to the Defendant and unknown to Plaintiffs.

XIII.

That the attention of the Defendant was directed to said improper, illegal, inequitable and erroneous

charges and credits aforesaid and that said Defendant expressly promised that said erroneous, improper, illegal and inequitable charges and credits and any and all erroneous, improper, illegal and inequitable charges made at any time would be rectified and payment made to Plaintiffs therefor upon a correct, full and final accounting which said Defendant promised it would later make and render to the Plaintiffs.

XIV.

That no full, final and correct accounting promised as aforesaid has ever been made by the Defendant to the Plaintiffs pertaining to its operations under aforesaid "Operating Agreement" and "Assignment" nor has payment been made by Defendant, nor by any other person or persons on its behalf, to the Plaintiffs of the amounts of aforesaid erroneous, improper, inequitable and illegal charges and interest charges and credits with the result that the Plaintiffs have been deprived by the Defendant from receiving and realizing the benefits under aforesaid "Operating Agreement" and "Assignment" to which they were and are justly entitled.

XV.

That written notices of Plaintiffs' claims of aforesaid illegal and inequitable charges and credits have been heretofore given the Defendant and written demands have been heretofore made by the Plaintiffs, respectively, to and upon the said Defendant that said Defendant render a true and correct accounting in accordance with the terms and provisions of

aforesaid "Operating Agreement" and "Assignment" and make payment to Plaintiffs, respectively, of the amounts found due upon such accounting and that Defendant has failed and refused to render said true and correct accounting and has failed to make payment to said Plaintiffs of sums which will be [10] found due to Plaintiffs, from the Defendant, upon said accounting.

XVI.

That upon a true and correct accounting by Defendant to Plaintiffs there will be found to be due and payable to Plaintiffs, respectively, large sums of money the exact amounts of which are known to Defendant and unknown to Plaintiffs and which Plaintiffs allege will be in excess of the sum of One Hundred Seventy-five Thousand Dollars (\$175,000.00) due Plaintiff Inland Empire Oil and Gas Syndicate, and will exceed the sum of One Hundred Ninety-five Thousand Dollars (\$195,000.00) due to the Plaintiff Potlatch Oil and Refining Company.

XVII.

That said Troy-Sweetgrass Oil Syndicate and the Plaintiffs, respectively, have performed all of the terms, conditions and provisions of said "Operating Agreement" and "Assignment" upon their parts to be performed.

Wherefore, Plaintiffs pray judgment that the Defendant render a true and correct accounting to the Plaintiffs, respectively, of Defendant's operations

under aforesaid "Operating Agreement" and "Assignment" and that said Defendant be adjudged and ordered to pay to Plaintiffs, respectively, the sums found due and owing upon such accounting and for such other and further relief as may be equitable, just and proper.

E. J. McCABE,
Attorney for Plaintiffs.

State of Montana,
County of Cascade—ss.

E. J. McCabe, being first duly sworn, deposes and says:

That he is the attorney for the Plaintiffs named in the foregoing complaint, that he has read said complaint, knows the contents thereof, and that same is true to the best knowledge, [11] information and belief of affiant.

That affiant makes this verification for and on behalf of the Plaintiffs for the reason that no officer, agent or trustee of the said Plaintiffs, or of either of the said Plaintiffs, is within the County of Cascade wherein affiant resides and maintains his office and where this verification is made.

E. J. McCABE.

Subscribed and sworn to before me this 17th day of March, 1947.

[Seal]: FLOYD E. SMITH,
Notary Public for the State of Montana Residing at
Great Falls, Montana.

My commission expires 6-14-48. [12]

EXHIBIT A

Operating Agreement

This Agreement, made and entered into this fifteenth day of June, A.D. 1922, by and between the Troy-Sweetgrass Oil Syndicate, a common law trust, of Shelby, Montana, County of Toole, State of Montana, hereinafter called the party of the first part, and the Ohio Oil Company, an Ohio corporation, of Findlay, Ohio, hereinafter called the party of the second part, Witnesseth:

That, Whereas, the said party of the first part in pursuance of a prior verbal agreement did on this date sell, assign, transfer and convey unto the said party of the second part, its successors or assigns, an undivided Fifty-five (55%) per centum interest in and to the oil and gas leases covering the following described lands, to wit:

West half ($W\frac{1}{2}$) of Section thirty-three (33), and East half of East half ($E\frac{1}{2}E\frac{1}{2}$) of Section twenty-eight (28), West half of West half ($W\frac{1}{2}W\frac{1}{2}$), northeast quarter of southwest quarter ($NE\frac{1}{4}SW\frac{1}{4}$), North half of Southeast quarter ($N\frac{1}{2}SE\frac{1}{4}$), and southeast quarter of southeast quarter ($SE\frac{1}{4}SE\frac{1}{4}$) of Section twenty-seven (27), and west half of southwest quarter ($W\frac{1}{2}SW\frac{1}{4}$) of Section twenty-six (26), all in Township thirty-six (36) north, Range two (2) west, M. M., and North half ($N\frac{1}{2}$) of Section one (1), and Southwest quarter ($SW\frac{1}{4}$) of Section three (3), and Southeast quarter ($SE\frac{1}{4}$) of Section four (4),

being situate in Township thirty-five (35) North, Range Two (2) west, of M. M., and all above described lands situate in Toole County, State of Montana, and containing fifteen hundred and twenty (1520) acres, more or less, and,

Whereas, the party of the first part is desirous of having the party of the second part develop and operate said premises for oil and gas purposes, and,

Whereas, the parties hereto desire to reduce to writing the terms and conditions of their understanding or agreement,

Now, Therefore, in consideration of the premises and one dollar by each of the parties hereto to the other in hand paid, the receipt of which is hereby acknowledged, and of the covenants and stipulations hereinafter contained, to be duly kept, paid and performed by the parties hereto, it is hereby mutually agreed:

I. The party of the second part shall have the control and management of the said lands and leases and of the development and operation thereof for oil and gas purposes, including the marketing of the oil and gas produced.

II. As a consideration for the assignment hereinabove mentioned, the party of the second part agrees that it will commence the drilling of a well within thirty days from the date hereof upon the above described lands and at such location as shall be selected by the party of the second part and will continue said work in a diligent and work-

manlike manner to such a depth as shall be deemed an adequate test of the oil and gas content of the first commercial oil sand, in compliance with the terms and conditions of the leases of the party of the first part. It is further agreed that said well shall be drilled free of all cost and expense to the party of the first part, and in the event the said first well shall be termed a failure and of no commercial value and the second party desires to surrender the lease or leases it is understood and agreed that the party of the first part shall have no right or title whatsoever in or to any material, tools or equipment of any kind that has or have been furnished by the second party for the drilling of such well.

III. In the event that the well described in paragraph two herein above shall prove a commercial well, the party of the second part shall continue the work of developing and operating said premises in as diligent a manner as field and market conditions warrant and as is consistent with good business management. It will pay all costs and expenses of developing and [13] operating said lands for oil and gas purposes, as herein provided, and shall charge the said party of the first part Forty-five (45%) per cent thereof. Second party shall market all oil and gas produced upon said land and account to the party of the first part for the undivided Forty-five (45%) per centum of the proceeds thereof at the prevailing market price at the wells for said oil and gas after deducting all royalty oil and gas or the proceeds thereof. The

said party of the second part shall be reimbursed by the said party of the first part solely from the first party's proportion of the oil and gas produced and sold from said land. Application from proceeds from sale of said oil and gas will be made to the credit of the first party's account upon the first day of the month following that in which said oil and gas is sold, but in no case shall said party of the first part be finally held or charged beyond its share or interest in the production and equipment from, in or upon said lands. The party of the second part shall be entitled to and shall charge the party of the first part eight (8) per centum interest upon all moneys so advanced for the development and operations upon said lands for the account of the interest of the first party's until the same shall have been paid out of the proceeds of the party of first part's proportion of the oil and gas produced and sold as herein provided, said interest payments to be also paid out of production.

IV. The party of the second part hereby agrees to render the party of the first part monthly statements showing the actual cost and expenses of developing and operating said lands and leases and will remit monthly to the party of the first part all proceeds of the oil and gas sold from the interest of the first party over and above the amount necessary to reimburse the party of the second part for expenditures made by it for the account and interest of the party of the first part.

V. The party of the first part through its duly

authorized agents or representatives shall at all reasonable times have access to the buildings, lands and property hereinabove for the purpose of examining the operations thereon and the production therefrom, and at all reasonable times during business hours shall have the right to examine the books and records of the party of the second part insofar as they pertain to the operations conducted under this agreement.

VI. The party of the first part hereby gives and grants unto the party of the second part upon the considerations aforesaid the first right and option to purchase the interest of the first party in the lands and lease above described under and by virtue of the terms of this agreement should the first party at any time desire to dispose of its said interest.

VII. The party of the second part shall fully comply with all the terms and provisions contained in the leases hereinabove described unless and until surrendered unto the party of the first part, but shall have the right, however, upon the payment of One Dollar to the party of the first part, to surrender the whole or any part of the above described leases and lands embraced and included therein, and shall thereafter be relieved by said party of the first part from any further liabilities as to any such lands surrendered.

The terms and conditions of this agreement shall extend to and be binding upon the heirs, administrators, successors and assigns of the parties hereto.

In Witness Whereof, the parties hereto have caused this instrument to be executed the day and year first above written.

Witness:

A. M. SELLERY.

Witness:

A. M. SELLERY.

[Seal] TROY-SWEETGRASS OIL
SYNDICATE,

By T. P. JONES,
President,

Attest:

KENNETH G. LUKE,
Secretary,
Party of the first part.

[Seal] THE OHIO OIL COMPANY,
By F. E. HURLEY,
Vice President,

Attest:

.....,
Secretary,
Party of second part. [14]

EXHIBIT B

Assignment

Know All Men by These Presents, That the Troy-Sweetgrass Oil Syndicate, a common law trust, of Shelby, Montana, for and in consideration of the sum of One Dollar to it in hand paid, receipt of which is hereby acknowledged, does hereby sell, assign, transfer, quitclaim, convey and confirm unto The Ohio Oil Company, a corporation, of Findlay, Ohio, its successors and assigns, an undivided fifty-five (55%) per centum interest in and to the following described oil and gas leases and lands, to wit:

1. A certain oil and gas lease made and entered into on June 16, A.D. 1920, by and between Frank McMahan, party of the first part, and Thomas D. Brown, party of the second part, covering the West half of the Southwest Quarter ($W\frac{1}{2}SW\frac{1}{4}$) of Section Twenty-six (26), Township Thirty-six (36) north, Range Two (2) west, M.M., the East half of Southeast quarter ($E\frac{1}{2}SE\frac{1}{4}$), the Northwest quarter of the Southeast quarter ($NW\frac{1}{4}SE\frac{1}{4}$), and the Northeast quarter of the Southwest quarter ($NE\frac{1}{4}SW\frac{1}{4}$) of Section Twenty-seven (27), Township Thirty-six (36) North, Range Two (2) West, M.M., Toole County, Montana, containing two hundred and forty (240) acres, more or less.

2. A certain oil and gas lease made and entered into on June 7, A.D. 1920, by and between Mrs. Cora Phillips, party of the first

part, and Thomas D. Brown, party of the second part, covering the West half of West half ($W\frac{1}{2}W\frac{1}{4}$) of Section Twenty-seven (27), and the East half of the East half ($E\frac{1}{2}E\frac{1}{2}$) of Section Twenty-eight (28), all in Township Thirty-six (36) north, Range Two (2) west, Toole County, Montana, containing three hundred and twenty (320) acres, more or less;

3. A certain oil and gas lease made and entered into April 29, A.D. 1922, by and between Israel Sindon and Sophia Sindon (his wife), parties of the first part, and the Potlatch Oil and Refining Company, party of the second part, covering the North half ($N\frac{1}{2}$) of Section One (1), Township Thirty-five (35) north, Range Two (2) west, M.M., Toole County, Montana, covering three hundred and twenty (320) acres, more or less;

4. A certain oil and gas lease made and entered into April 27, 1921, by and between Irving H. Baker, a single man, party of the first part, and the Troy-Sweetgrass Oil Syndicate, party of the second part, covering the Southwest quarter ($SW\frac{1}{4}$) of Section Three (3) and the Southeast quarter of Section Four (4), all in Township Thirty-five (35) north, Range Two (2) west, M.M., Toole County, Montana, containing three hundred and twenty (320) acres, more or less;

5. A certain Warranty Deed made and entered into on April 17, 1922, by and between

Thomas Hamsen Anderson, a single man, party of the first part, and The Troy-Sweetgrass Oil Syndicate, a common law trust, party of the second part, covering the West half (W $\frac{1}{2}$) of Section Thirty-three (33), situate in Township Thirty-six (36) north, Range Two (2) west, of the M.M., Toole County, Montana, containing three hundred and twenty (320) acres, more or less.

To Have and to Hold, the said undivided fifty-five (55%) per centum interest in and to the foregoing oil and gas leases and lands unto said The Ohio Oil Company, its successors and assigns forever, for the purpose of developing and operating said lands for oil and gas purposes, but subject nevertheless to all the terms and conditions as set forth therein.

TROY-SWEETGRASS OIL
SYNDICATE,

By T. P. JONES,
President.

Attest:

[Seal] KENNETH G. LUKE,
Secretary.

Witness:

A. M. SELLERY.

[Endorsed]: Filed Mar. 18, 1947, Ninth Judicial District Court, Montana. [15]

In the District Court of the Ninth Judicial District
of the State of Montana, in and for the County
of Toole

[Title of Cause.]

PETITION FOR REMOVAL TO THE DIS-
TRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MONTANA

Comes Now the Ohio Oil Company, a corporation,
named as the sole defendant in the above-entitled
cause, and files this its petition for removal of this
case from the aforesaid District Court in which it
is now pending, to the District Court of the United
States, in and for the District of Montana, and as
grounds for said petition, this defendant says as
follows:

1. This cause was filed in this Court on March
18, 1947, and is now pending therein.

2. Said cause is one of a civil nature, of which
the District Courts of the United States have orig-
inal jurisdiction, being a suit in equity for an
accounting.

3. The matter in controversy in the above-
entitled cause exceeds the sum of Three Thousand
(\$3,000.00) Dollars, exclusive of interest and costs.

4. The above-entitled action involves a contro-
versy which is wholly between citizens of different
States in that plaintiff Potlatch Oil and Refining
Company is a corporation organized and existing
under and by virtue of the laws of the State of

Montana, and was, at the time of commencement of said suit, and ever since has been and still is a citizen of the State of Montana; and plaintiff Inland Empire Oil and Gas Syndicate, a business trust, has no legal capacity to bring suit in this Court and should therefore be disregarded for removal purposes, or in the alternative, the trustees of said alleged [16] business trust as named in plaintiffs' complaint, namely, Jean P. Gerlough, B. H. Hornby and Stanley H. Hodgman, are the only persons legally capable of bringing suit on behalf of said business trust, and said Jean P. Gerlough and Stanley H. Hodgman were, at the time of the commencement of this cause, and ever since have been and still are residents and citizens of the State of Montana, and said B. H. Hornby was, at the time of the commencement of this cause, and ever since has been and still is a resident and citizen of the State of Idaho; and your petitioner, The Ohio Oil Company, sole defendant in said suit, is a corporation organized and existing under and by virtue of the laws of the State of Ohio, and was, at the time of commencement of said suit, and ever since has been and still is a citizen of the State of Ohio, and a non-resident of the State of Montana.

5. This petition for removal is filed prior to the time your petitioner is required by the laws of the State of Montana or the rules of this Honorable Court to answer or plead to said complaint of plaintiffs in this cause.

6. Your petitioner files herewith a bond with

good land sufficient surety, conditioned as required by law that it will enter into the District Court of the United States for the District of Montana within thirty (30) days from the filing of this petition, a certified copy of the record in this suit, and that it will pay all costs which may be awarded by said District Court of the United States if said Court shall hold this cause was wrongfully or improperly removed thereto.

7. Prior to the filing of this petition and said bond, written notice thereof and of your petitioner's intention to file the same was duly given by your petitioner to plaintiffs in this cause as required by law, a true copy of said notice with proof of service being hereto attached.

Wherefore your petitioner prays that this Honorable Court proceed no further herein except to approve said bond herein filed and make an order of removal to the District Court of the United States for the District of Montana as required by law, and [17] to cause a transcript of the record herein to be prepared and filed in said District Court of the United States, according to the statutes of the United States in such case made and provided.

Dated this 1st day of April, 1947.

/s/ W. H. EVERETT,

/s/ LOUIS P. DONOVAN,

Attorneys for Petitioner, The Ohio Oil Company, an
Ohio Corporation.

State of Ohio,
County of Hancock—ss.

G. E. McCullough, being first duly sworn on oath, deposes and says that he is Vice President of The Ohio Oil Company, an Ohio corporation, petitioner in the above-entitled cause, and as such is duly authorized to make this affidavit; that he has read the above and foregoing petition and is familiar with the matters and facts therein set forth, and that said matters and facts therein set forth are true and correct.

/s/ G. E. McCULLOUGH.

Subscribed and sworn to before me, a Notary Public, in and for said County and State aforesaid, this 1st day of April, 1947.

[Seal] /s/ LONNIE E. DAVIS,
Notary Public, Hancock
County, Ohio.

My Commission Expires Jan. 11, 1949. [18]

The State of Ohio,
Hancock County—ss.

I, Walter D. Feller, Clerk of said County and of the Courts thereof, the same being Courts of record, do hereby certify that Lonnie E. Davis, whose name is subscribed to the proof or acknowledgment of the annexed instrument in writing, was at the time of taking such proof or acknowledgment, a Notary Public in and for the said county, duly commissioned, sworn and authorized to take the same and

to take the proof or acknowledgment of deeds and other instruments in writing, and to administer oaths or affirmations in said county; and further, that I am well acquainted with his handwriting, and verily believe that the signature to the said proof or acknowledgment is genuine; and further, that the annexed instrument is executed according to the laws of the State of Ohio.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said County, at Findlay, O., this 1st day of April, 1947.

[Seal] WALTER D. FELLER,
Clerk.

E. T.

[Endorsed]: Filed April 5, 1947, Ninth Judicial District Court, Montana. [19]

In the District Court of the Ninth Judicial District
of the State of Montana, in and for the County
of Toole

[Title of Cause.]

DEMURRER

Comes Now The Ohio Oil Company, a corporation, named as defendant in the above-entitled and numbered action, and demurs to Plaintiffs' Complaint upon the following grounds and for the following reasons:

1. That the co-plaintiff, Inland Empire Oil and Gas Syndicate, a business trust, has not the legal

capacity to sue, in that said Inland Empire Oil and Gas Syndicate is an unincorporated association commonly designated a business trust;

2. That there is a misjoinder of parties plaintiff in that said unincorporated association designated Inland Empire Oil and Gas Syndicate is joined as co-plaintiff with Potlatch Oil and Refining Company, a corporation.

3. That causes of action have been improperly united, in that the Complaint contains an alleged cause of action in favor of Potlatch Oil and Refining Company, a corporation, together with a separate and distinct cause of action in favor of the alleged co-plaintiff, Inland Empire Oil and Gas Syndicate.

4. That the Complaint does not state facts sufficient to constitute a cause of action in favor of Potlatch Oil and Refining Company.

5. That the Complaint does not state facts sufficient to constitute a cause of action in favor of the co-plaintiff, Potlatch Oil [20] and Refining Company, a corporation.

6. That the Complaint does not state facts sufficient to constitute a cause of action in favor of the co-plaintiff, Inland Empire Oil and Gas Syndicate, a business trust.

7. That the Complaint does not state facts sufficient to constitute a cause of action in favor of Potlatch Oil and Refining Company, a corporation,

and Inland Empire Oil and Gas Syndicate, a business trust, or either of them.

/s/ W. H. EVERETT,

/s/ LOUIS P. DONOVAN,

Attorneys for Petitioners,
Ohio Oil Co.

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 7, 1947, Ninth Judicial District Court, Montana. [21]

In the District Court of the Ninth Judicial District
of the State of Montana, in and for the County
of Toole

[Title of Cause.]

ORDER GRANTING REMOVAL

This cause, coming on to be heard upon the petition of defendant The Ohio Oil Company, an Ohio Corporation, for an order removing this cause to the District Court of the United States for the District of Montana, and it appearing to this Court that said defendant has filed its petition for such removal in due form and within the required time to be filed and the bond duly conditioned as provided by law, and it being shown to the Court that the notice required by law of the filing of said bond and petition, had, prior to the filing thereof, been served upon the attorney for plaintiffs herein, which notice the Court finds sufficient.

And it appearing to the Court that this is a proper cause for removal to said District Court of the United States, this Court doth now hereby accept and approve said bond and said petition and doth order this cause to be removed to the District Court of the United States for the District of Montana, pursuant to the statute of the United States in such case made and provided, and doth further order that all other proceedings in said cause in this Court be stayed and that the Clerk of this Court prepare a transcript of the record in this cause [23] for transmission to said District Court of the United States in and for the District of Montana.

Dated this 19th day of April, 1947.

R. M. HATTERSLEY,

Judge of the District Court of the Ninth Judicial District of the State of Montana, in and for the County of Toole.

[Endorsed]: Filed April 19, 1947; Ninth Judicial District Court, Montana.

[Transcript of Removal]: Filed May 2, 1947; District Court of the United States, District of Montana. [24]

[Title of District Court and Cause.]

CONSOLIDATED MOTION FOR SEVERANCE
OF CLAIMS, TO DISMISS FOR LACK OF
CAPACITY TO SUE, TO DISMISS ON
GROUND OF STATUTE OF LIMITA-
TIONS, FOR MORE DEFINITE STATE-
MENT, AND TO STRIKE CERTAIN
PORTIONS OF PLAINTIFFS' COM-
PLAINT

Comes Now the above-named defendant and by this consolidated motion moves the court—(1) for an order severing the claims asserted against it herein by plaintiffs; (2) for an order dismissing said action as to Plaintiff, Inland Empire Oil and Gas Syndicate, for lack of capacity to sue; (3) for an order dismissing said action on the ground of statutes of limitations; (4) for an order requiring plaintiffs to make their complaint more definite in various particulars; and (5) for an order striking from plaintiffs' complaint various portions thereof.

First

Motion for Severance of Claims

Defendant moves the court for an order severing the claim asserted against it herein by Plaintiff, Inland Empire Oil and Gas Syndicate, from the claim asserted herein against defendant by Plaintiff, Potlatch Oil and Gas Company, on the [26] grounds that:

- (1) Defendant was not a party to the contracts

under which either plaintiff may have acquired its respective interest from their common predecessor in interest and the issues as between defendant and one plaintiff may be entirely different than those between defendant and the other plaintiff;

(2) Defendant may be put to undue expense and embarrassment if it is required to proceed with its defense as to both plaintiffs at once without a severance of the cases and issues;

(3) The trial of the action will be embarrassed and confused by a joint trial of the claims asserted against this defendant by both plaintiffs, in that defendant may have independent defenses as to many of the claims of one plaintiff, which said defenses may be the same or may be entirely different from those against the other plaintiff, and to permit plaintiffs to proceed in this suit without separately stating their alleged claims would be in violation of Rule 10 (b) of the Federal Rules of Civil Procedure, in that a separate statement of the claim of each plaintiff is necessary to facilitate the clear presentation of their respective claims.

Second

Motion to Dismiss for Lack of Capacity to Sue

Defendant moves the court for an order dismissing the action insofar as plaintiff Inland Empire Oil and Gas Syndicate is concerned on the following grounds:

1. Plaintiff Inland Empire Oil and Gas Syndi-

cate alleges itself to be a business trust. The complaint [27] fails to state a claim against the defendant upon which relief can be granted, in that a business trust has no capacity to sue as such under the laws of the State of Montana.

Third

Motion to Dismiss on Ground of Statutes of Limitations

Defendant moves the court to dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted in that it appears on the face of the complaint:

1. That the claim arose more than ten years prior to the filing of the complaint herein and that the action is therefore barred by the applicable provisions of Subdivision 2 of Section 9028 of the Revised Codes of Montana of 1935;

2. That the claim arose more than eight years prior to the filing of the complaint herein and that the action is therefore barred by the applicable provisions of Section 9029 of the Revised Codes of Montana of 1935;

3. That the claim arose more than five years prior to the filing of the complaint herein and that the action is therefore barred by the applicable provisions of Subdivision 1 of Section 9030 of the Revised Codes of Montana of 1935;

4. That the claim arose more than three years prior to the filing of the complaint herein and that

the action is therefore barred by the applicable provisions of Subdivision 3 of Section 9031 of the Revised Codes of Montana of 1935; [28]

Fourth

Motion for More Definite Statement

Defendant moves the court for an order requiring plaintiffs to make a more definite statement of the following matters which are averred by plaintiffs in their complaint, but which are not averred with sufficient definiteness or particularity to enable defendant properly to prepare its responsive pleading or to prepare for trial. The defects complained of and the details desired are as follows:

1. In connection with the entire complaint, each plaintiff should be required to separately state its alleged claim against defendant so as to comply with the provisions of Rule 10 (b) of the Federal Rules of Civil Procedure in that a separation would facilitate the clear presentation of the matters set forth;

2. In connection with Paragraph IV of the complaint, that plaintiffs be required to show the extent and nature of the trust, together with the names and addresses of the real parties in interest;

3. In connection with Paragraph VII of the complaint, that plaintiffs be required to show the date of commencement and completion of the exploratory well therein referred to, together with the location by lease and legal description, and that plaintiffs be required to attach to the complaint a

copy of the lease under which the well was drilled, and that plaintiffs be required to state in barrels the amount of oil discovered and to set forth, by bill of particulars or otherwise, the wells drilled, giving dates, depths, amounts of production in barrels, and giving the detail in connection with [29] the development and operation of lands, separating such detail as to leases;

4. In connection with Paragraph VIII of the complaint, that plaintiffs be required to show the manner in which the alleged notice was given, whether verbal or written, the date of such notice and to whom same was given, and that plaintiffs also be required to allege at what times and in what manner Plaintiff Inland Empire Oil and Gas Syndicate's alleged ownership has been recognized by defendant;

5. In connection with Paragraph IX of the complaint, that plaintiffs be required to show the manner in which the alleged notice was given, whether verbal or written, the date of such notice, and to whom same was given, and that plaintiffs also be required to allege at what times and in what manner Plaintiff Potlatch Oil and Refining Company's alleged ownership has been recognized by defendant, and that plaintiffs be required to show by legal description what lands and leases are referred to in said paragraph, showing further the alleged interests therein of plaintiffs and defendant as to each such lease;

6. In connection with Paragraph X of the complaint, that plaintiffs be required to set forth the dates of drilling of the alleged exploratory well and, by bill of particulars or otherwise, to set forth the dates of completion together with location of wells by legal description and under what leases same were drilled, and further show the amount or amounts of production in barrels, price received and the detail on other disposition referred to in said paragraph, by barrels, wells and leases; [30]

7. In connection with Paragraph XI of the complaint, that plaintiffs be required to set up, by bill of particulars or otherwise, the particular items charged to plaintiffs pursuant to said Operating Agreement to which plaintiffs object, together with dates of said items and the alleged grounds of such objections, so that defendant may be informed of the exact amount of plaintiffs' claim and why it is alleged that said claim exists, giving also the dates of prior objections made to defendant by plaintiffs, or either of them, with reference to any of said items, and to set forth with particularity the manner and dates and to whom the claim was made which plaintiffs allege: "Defendant claimed it had expended in attempting to perform the terms of said 'Operating Agreement' ";

8. In connection with Paragraph XII of the complaint, that plaintiffs be required to set up, by bill of particulars or otherwise, the amounts credited to plaintiffs for their shares of the oil and the basis

of such amounts, including prices, amount of oil and dates, also the prevailing market price or prices for the oil at the wells and the dates of such prices, and the amount or amounts in barrels of oil which it is alleged defendant purchased and appropriated and the dates applicable thereto;

9. In connection with Paragraph XIII of the complaint, that plaintiffs be required to set up, by bill of particulars or otherwise, the charges and credits to which they object, giving the dates and amounts thereof as well as the dates which they [31] claim that the attention of the defendant was directed to such items, and to state with particularity when, where and in what manner the defendant expressly promised to rectify any such claimed erroneous charges, whether written or verbal, and to and by whom made and upon what authority;

10. In connection with Paragraph XV of the complaint, that plaintiffs be required to attach copies of the written notices which they allege were given to defendant by plaintiffs and to set up the charges and credits which plaintiffs claim were inequitable, giving also the dates of said items and the alleged grounds of such objections so that defendant may be informed of the exact amount of plaintiffs' claim and why it is alleged that said claim exists, also setting forth with particularity all accounts which have been furnished to plaintiffs by defendant and accepted by plaintiffs without exception;

11. In connection with Paragraph XVI of the complaint, that plaintiffs be required to set up, by bill of particulars or otherwise, the sums of money which they allege to be due, showing the amounts thereof by years.

Fifth

Motion to Strike

Defendant moves the court to strike from the plaintiffs' complaint the following allegations for the reasons hereinafter set forth:

1. All of Paragraph III for the reason that the matters stated therein are redundant, immaterial and impertinent.

2. That portion of Paragraph V commencing with the [32] words "That the making" in the 21st line on page 2 of said complaint and continuing to the end of said paragraph, for the reason that said matter is redundant, immaterial and impertinent.

3. All of Paragraph XI on pages 6 and 7 for the reason that the statements therein contained are redundant, immaterial, impertinent or scandalous matter, the same constitute a conclusion of the pleader and do not constitute any pretended statement of fact or facts which is a part of any pretended cause of action in favor of plaintiffs and against defendant, said allegations are in conflict with the specific terms and provisions of the operating agreement attached to and made a part of plaintiffs' complaint, and constitute sham pleading.

4. The words “improper, illegal, inequitable and erroneous” in the second line of Paragraph XIII (4th line on page 8), and the words “erroneous, improper, illegal and inequitable” in the 4th and 5th lines of Paragraph XIII (6th and 7th lines on page 8), for the reason that said statements are redundant, immaterial, impertinent or scandalous matter, and constitute mere conclusions of the pleader.

5. The words “aforesaid erroneous, improper, inequitable and illegal” in the 6th line of Paragraph XIV (17th line on page 8), and that portion of said paragraph beginning with the words “with the result that the” in the 18th line on page 8 and continuing to the end of said paragraph, for the reason that said matters are redundant, immaterial, impertinent or scandalous matter, and constitute mere conclusions of the pleader.

6. The words “illegal, and inequitable” in the 1st and 2nd lines of Paragraph XV (23rd and 24th lines on page 8), and that portion of said paragraph beginning with the words [33] “and has” in the 31st line on page 8 and continuing to the end of said paragraph, for the reason that said statements are a mere conclusion of the pleader, and are redundant, immaterial and impertinent.

7. All of Paragraph XVI on page 9 for the reason that said statements are mere conclusions of the pleader, and are redundant, immaterial and impertinent.

Dated this 2nd day of May, 1947.

/s/ LOUIS P. DONOVAN,
Attorney for The Ohio Oil
Company, Shelby, Montana.

/s/ W. H. EVERETT,
Attorney for The Ohio Oil
Company.

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 5, 1947. [34]

[Title of District Court and Cause.]

MOTION FOR ORDER OF
SUBSTITUTION OF PARTY

Come Now Jean P. Gerlough and Stanley Hodgman, as trustees of that certain trust estate known and identified as Inland Empire Oil and Gas Syndicate, and Inland Empire Oil & Gas Syndicate, interchangeably, and as such trustees, two of the parties plaintiffs in the above-entitled action, by and through the undersigned, the attorney of record for said parties, and respectfully move the court for an order substituting Roy E. Larson of Shelby, Montana, as one of the present trustees of the aforesaid trust estate, as a party plaintiff in the above-entitled action in the place and stead of B. H. Hornby, who is named in the complaint filed in said action as one of the trustees of aforesaid trust estate for the reason that subsequent to the commencement of the

above-entitled action the said B. H. Hornby, named as a trustee of aforesaid trust estate in the complaint filed in said action, died, and the above-named Roy E. Larson of Shelby, Montana, was duly appointed as a trustee of aforesaid trust estate in the place and stead of said B. H. Hornby, deceased.

The within motion is based upon all the files, records and proceedings in the above-entitled action and upon the annexed affidavit of Jean P. Gerlough and the annexed written consent of aforesaid Roy E. Larson, trustee, to his substitution as a party plaintiff in said action in the place and stead of B. H. Hornby, deceased.

Dated this 8th day of August, 1947.

E. J. McCABE,

Attorney for Jean P. Gerlough and Stanley Hodgman, as Trustees of Inland Empire Oil and Gas Syndicate, a Business Trust.

[Endorsed]: Filed August 8, 1947. [37]

[Title of District Court and Cause.]

AFFIDAVIT

State of Montana,
County of Toole—ss.

Jean P. Gerlough being first duly sworn upon oath deposes and says:

That he is a resident of the city of Shelby, Toole County, Montana;

That at the time of the commencement of the above-entitled action in the district court of the ninth judicial district of the State of Montana, in and for the County of Toole, affiant and Stanley H. Hodgman, a resident of Missoula, Missoula County, Montana, and B. H. Hornby, a resident of the State of Idaho, were the duly appointed, qualified, and acting trustees of a certain trust estate, commonly known as a business trust, and which trust embraced undivided mineral interests in land situate in Toole County, Montana, and in a written agreement pertaining to said mineral interests in said lands as set forth and described in the complaint of the Plaintiffs filed in the above-entitled action, reference to which complaint is hereby made for full particulars thereof;

That affiant and said Stanley H. Hodgman and B. H. Hornby, as trustees of aforesaid trust estate conducted the business and affairs thereof in their collective capacities as such trustees under the [38] names Inland Empire Oil & Gas Syndicate and Inland Empire Oil and Gas Syndicate, interchangeably, and that said names Inland Empire Oil & Gas Syndicate and Inland Empire Oil and Gas Syndicate refer and pertain to the one and same aforesaid trust estate.

That in their capacities as said trustees they joined with the Potlatch Oil and Refining Company, a corporation, as parties Plaintiffs in commencing the above action and in the caption of the complaint filed in said action they used the name Inland Empire Oil and Gas Syndicate as represent-

ing and designating their collective capacities as trustees of aforesaid trust estate as Plaintiffs with said Potlatch Oil and Refining Company.

That subsequent to the commencement of the above-entitled action and its removal upon petition of the above-named defendant to the District Court of the United States in and for the District of Montana, to wit, on the 9th day of April, 1947, the aforesaid B. H. Hornby died and that thereafter, on the 15th day of May, 1947, Roy E. Larson of Shelby, Montana, was appointed trustee of aforesaid trust estate to fill the vacancy in the office of trustee resulting by reason of the death of the aforesaid B. H. Hornby and that thereafter on the 31st day of May, 1947, Roy E. Larson accepted appointment as a trustee of aforesaid trust estate and that at all times since said 31st day of May, 1947, affiant and said Stanley H. Hodgman and said Roy E. Larson have been and now are the duly appointed, qualified and acting trustees of aforesaid trust estate;

That the said Roy E. Larson has not been heretofore substituted as a party Plaintiff in said action;

That affiant makes this affidavit for and on behalf of the motion of affiant and said Stanley H. Hodgman, as parties in the above-entitled action, for the substitution of said Roy E. Larson as a party plaintiff in the above-entitled action in the place and stead of aforesaid B. H. Hornby, Deceased, and in support of the [39] motion of said affiant and Stanley H. Hodgman, for an order of the above-entitled court substituting the said Roy E. Larson as a party

Plaintiff in the above action in the place and stead of B. H. Hornby, deceased.

JEAN P. GERLOUGH.

Subscribed and sworn to before me this 10th day of July, 1947.

[Seal] DAVID C. THOMPSON,
Notary Public for the State of Montana, Residing
at Belton, Montana.

My Commission Expires April 30, 1949.

[Endorsed]: Filed August 8, 1947. [40]

[Title of District Court and Cause.]

NOTICE OF MOTION AND SUBMISSION
THEREOF ON BRIEF

To the Defendant above named and to Messrs. Louis
P. Donovan and W. H. Everett, its attorneys:

Please take notice that Jean P. Gerlough and Stanley Hodgman as trustees of Inland Empire Oil and Gas Syndicate, a business trust, and named as such in the complaint filed in the above-entitled action will, by written motion to be filed in the above-entitled court and cause on the 8th day of August, 1947, move the above-entitled court for an order substituting as a party plaintiff in said action, Roy E. Larson, as a trustee of said business trust, in the place and stead of B. H. Hornby as a trustee of said business trust, because of the death

of said B. H. Hornby, and will submit said motion to the court upon written briefs pursuant to rule 40 (2) of the special rules of the above-entitled court.

True and correct copies of aforesaid motion and brief are herewith delivered to and served upon you.

Dated August 8, 1947.

E. J. McCABE,
Attorney for Plaintiffs.

[Endorsed]: Filed August 8, 1947. [41]

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE

State of Montana,
County of Cascade—ss.

E. J. McCabe, being first duly sworn, deposes and says:

That he resides and maintains his office at Great Falls, Montana, and is the attorney of record for Jean P. Gerlough and Stanley Hodgman, two of the trustees of that certain trust estate, known and identified under the name of Inland Empire Oil and Gas Syndicate, and two of the parties plaintiffs in the above-entitled action;

That Louis P. Donovan is one of the attorneys of record for The Ohio Oil Company, defendant in aforesaid action, and resides and maintains his office at Shelby, Montana;

That on the 8th day of August, 1947, affiant enclosed true and correct copies of the annexed motion, notice of motion, affidavit of Jean P. Gerlough, and written consent of Roy E. Larson, and copy of the brief mentioned in aforesaid notice of motion, in a securely sealed envelope addressed to aforesaid Louis P. Donovan at Shelby, Montana, and deposited same in the United States Post Office at Great Falls, Montana, with postage thereon fully prepaid for transmission and delivery to the said Louis P. Donovan in regular course of United States Mail.

E. J. McCABE.

Subscribed and sworn to before me this 8th day of August, 1947.

[Seal] FLOYD E. SMITH,
Notary Public for the State of Montana, Residing
at Great Falls, Montana.

My Commission Expires 6-14-48.

[Endorsed]: Filed August 8, 1947. [42]

[Title of District Court and Cause.]

CONSENT TO SUBSTITUTION OF PARTY

I, the undersigned, Roy E. Larson, of Shelby, Montana, and one of the trustees of Inland Empire Oil and Gas Syndicate, a trust estate, hereby expressly consent to my appointment as a party plaintiff in the above-entitled action in the place and

stead of B. H. Hornby, trustee, deceased, and upon such substitution, I hereby promise and represent that I will act in the capacity as one of the plaintiffs in said action.

Dated this 9th day of July, 1947.

ROY E. LARSON.

State of Montana,
County of Toole—ss.

On this 9th day of July, 1947, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Roy E. Larson, known to me to be the person whose name is subscribed to the foregoing written instrument and acknowledged to me that he personally executed the same.

In Witness Whereof, I hereunto set my hand and affix my official seal on the day and year in this certificate first above written.

[Seal] P. R. MacHALE,
Notary Public for the State of Montana, Residing
at Shelby, Montana.

My Commission Expires June 24th, 1948.

[Endorsed]: Filed August 8, 1947. [44]

[Title of District Court and Cause.]

ORDER

The court has considered the motion of plaintiffs for substitution of Roy E. Larson, the newly appointed trustee of the Inland Oil and Gas Syndicate, as a party plaintiff herein, and the later motion that the caption of the complaint be amended by naming the three trustees of said syndicate as party plaintiffs herein under Rules 6 and 15 of the Federal Rules of Civil Procedure. Rule 15 provides that leave to amend shall be freely given when justice so requires, and this seems to be an instance for a proper application of the rule, and good cause appearing therefor, the motion of the plaintiffs to amend the caption of the complaint by the substitution of the names of the three trustees of the Inland Empire Oil and Gas Syndicate, a Business Trust, for, and in the place of the Inland Empire Oil and Gas Syndicate, a Business Trust, is hereby granted. Notice thereof to be served upon the defendant herein. From receipt of notice hereof counsel may have twenty days on a side to serve and file briefs in respect to the motion now pending in said cause.

CHARLES N. PRAY,
Judge.

[Endorsed]: Filed October 8, 1947. [46]

[Title of District Court and Cause.]

ORDER

The court has had under consideration the consolidated motion by defendant, (1) for severance of claims contained in the complaint in above cause, (2) to dismiss for lack of capacity to sue, (3) to dismiss on ground of statute of limitations, (4) for a more definite statement, (5) and to strike certain parts of the complaint.

The motion was submitted on briefs, no reply brief having been filed. The court has considered the motion and complaint, the arguments and some of the statutes, authorities and rules cited by counsel for the respective parties, and being duly advised, is now of the opinion that the motion should be denied with the right reserved of renewal of said motion, or any appropriate subdivision thereof, at the trial of said cause, and such is the order herein, with twenty days to answer upon receipt of notice hereof. If in the meantime further proceedings are deemed desirable under other applicable rules of the Federal Rules of Civil Procedure, further extension of time to answer may be given upon the usual application and showing therefor. *Bowles v. Brookside, etc.*, 4 F.R.D. 294; *Slusher, et al., v. Jones, et al.*, 3 F.R.D. 168.

CHARLES N. PRAY,
Judge.

[Endorsed]: Filed and entered April 7, [48]
1948.

[Title of District Court and Cause.]

ANSWER

Comes Now the defendant, The Ohio Oil Company, a corporation, and reserving the right to renew its Consolidated Motion (or any subdivision thereof) heretofore filed herein, as provided in the Order of the Court of April 7, 1948, denying said Motion, makes this, its Answer, to Plaintiffs' Complaint herein, as follows:

First Defense

The Complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

I.

Defendant Admits the allegations contained in paragraphs I, II and III and IV of Plaintiffs' Complaint.

II.

Answering paragraph V of Plaintiffs' Complaint, Defendant Admits that on or about the 15th day of June, A.D. 1922, said Troy Sweet Grass Oil [50] Syndicate and the defendant, The Ohio Oil Company, made and entered into a certain writing denominated "Operating Agreement" and a certain writing denominated "Assignment," and that a true and correct copy of said Operating Agreement is attached to the Complaint and marked Exhibit "A," and a true copy of said Assignment is attached to

the Complaint and marked Exhibit "B" thereof, and defendant Denies generally each and every other allegation in said paragraph contained.

III.

Defendant Admits the allegations of paragraphs VI and VII of said Complaint.

IV.

Answering paragraph VIII of the Complaint, defendant Admits the allegations thereof, but Alleges that the Assignment therein referred to is not dated, but is acknowledged as of January 1, 1923, and that Inland Empire Oil and Gas Syndicate purchased its interest "as subject to the interest of The Ohio Oil Company," and that said Assignment specifically refers to the Operating Agreement attached to Plaintiffs' Complaint.

V.

Answering paragraph IX of the Complaint, defendant Admits the allegations thereof, but Alleges that in the assignment therein referred to dated August 18, 1923, Potlatch Oil and Refining Company "agrees to keep and perform the terms and conditions of all contracts and agreements of every kind and description by this instrument or otherwise this day transferred to" Potlatch Oil and Refining Company.

VI.

Defendant Admits the allegations of paragraph X of Plaintiffs' Complaint.

VII.

Answering paragraph XI, defendant Admits that all proceeds from the sale and marketing and disposition of oil and gas produced from said lands during defendant's possession of the lands were received in the first instance by defendant, The Ohio Oil Company, but defendant Denies generally each and every other allegation in paragraph XI contained. [51]

VIII.

Defendant Denies generally the allegations contained in paragraph XII of the Complaint.

IX.

Answering the allegations of paragraph XIII of the Complaint, the defendant Denies generally the allegations thereof, but in this connection, the defendant Admits that shortly prior to August 1st, 1925, the plaintiffs herein made certain protests and objections to certain of the charges contained in monthly statements rendered by defendant herein to plaintiffs showing its expenses and other results of its operation under the terms of said Operating Agreement and for the purpose of adjusting and settling said protests and reaching an agreement thereon, a conference was had between representatives of plaintiffs herein and representatives of the defendant herein at Shelby, Montana, on or about August 7, 1925, and as a result of said conference, it was agreed between plaintiffs herein and the defendant herein that Messrs. Freeman, Thelen and Frary, attorneys at law at Great Falls, Montana, and

attorneys for plaintiffs herein, would reduce to writing and send to defendant herein a statement of the items constituting the difference of opinion between plaintiffs and the defendant in the interpretation of said Operating Agreement and plaintiffs' objections to accounts theretofore rendered by the defendant in connection with its operations under the said Operating Agreement, and pursuant thereto the said Messrs. Freeman, Thelen and Frary, attorneys and agents for the plaintiffs herein, did reduce to writing and send to the defendant, on or about the 8th day of August, 1925, a written statement of the items in dispute, and thereafter on September 12, 1925, the defendant, through its Cashier, F. B. Firmin, replied to said Messrs. Freeman, Thelen & Frary showing the propriety of all charges and credits previously made by The Ohio Oil Company in the operation of said leases described in said Operating Agreement. A full, true and correct copy of said written statement from Messrs. Freeman, Thelen & Frary addressed to defendant under date August 8, 1925, is hereto attached and marked Exhibit "A" hereof, and a full, true and correct copy of defendant's reply thereto under date September 12, 1925, is hereto attached and marked Exhibit "B" hereof; [52] and defendant Alleges that after the explanation of charges contained in the letter of defendant's Cashier, a copy of which is hereto attached and marked Exhibit "B" hereof, the plaintiffs herein made no further objection or protest to defendant's monthly accounts or any of them for more than twenty years thereafter and

until the 8th day of July, 1946, and that during said entire period of time between the 7th day of August, 1925, and the 8th day of July, 1946, written statements were rendered monthly by defendant herein to the plaintiffs herein showing the actual cost and expense of defendant in developing and operating said lands and leases, and for those months wherein said statements showed a credit balance proper remittances were made to the plaintiffs herein of plaintiffs' share of the proceeds of oil and gas sold from said oil and gas leases operated by defendant under said Operating Agreement over and above the amount necessary to reimburse the defendant for expenditures made by it for the account and interest of the plaintiffs herein and said statements were received by the plaintiffs herein and said remittances were accepted by the plaintiffs herein without any objection to the correctness of the statements or remittances, and said statements and remittances were retained by the plaintiffs herein without any objection thereto until on or about the 8th day of July, 1946, and said remittances are still retained by plaintiffs and each of them, and by reason thereof, an account stated has been made and entered into between plaintiffs herein and the defendant herein and same has been settled by said monthly payments and remittances which accompanied said statements.

X.

Defendant Denies generally the allegations of plaintiffs' Complaint contained in paragraph XIV.

XI.

Defendant Denies generally the allegations in Plaintiffs' Complaint contained in paragraph XV thereof, save and except as heretofore expressly admitted.

XII.

Defendant Denies generally the allegations contained in paragraphs [53] XVI and XVII of Plaintiffs' Complaint.

XIII.

Defendant Denies generally each and every allegation of plaintiffs' Complaint herein not heretofore expressly admitted or denied.

First Affirmative Defense

Defendant Alleges that the plaintiffs herein had notice of all the facts and also the accounts of the defendant set forth in the Complaint and nevertheless refrained from commencing this action until the 18th day of March, 1947, and has thereby been guilty of such laches as should in equity bar the plaintiffs from maintaining this action; and in this connection, defendant Alleges that its representatives, F. E. Hurley and A. M. Sellery, who negotiated said Operating Agreement and Assignment of Leases, copies of which are attached to Plaintiffs' Complaint herein and marked Exhibits "A" and "B" thereof, respectively, died prior to the commencement of this action, the said F. E. Hurley, defendant's Vice President, having died at Findlay, Ohio, on or about the 27th day of July, 1928, and the

said A. M. Sellery having died at El Paso, Texas, on or about the 14th day of February, 1927.

Second Affirmative Defense

Defendant Alleges that the right of action, if any, set forth in Plaintiffs' Complaint herein did not accrue within five years next before the commencement of this action.

Third Affirmative Defense

Defendant Alleges that the right of action set forth in Plaintiffs' Complaint herein, if any, did not accrue within eight years next before the commencement of this action. [54]

Fourth Affirmative Defense

I.

Defendant Alleges that on or about July 5, 1922, the defendant, The Ohio Oil Company, pursuant to the terms of said Operating Agreement, copy of which is attached to Plaintiffs' Complaint herein, commenced the drilling of a well upon the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 1, Township 35 North, Range 2 West (the Israel Sindon Oil and Gas Lease), known as the I. Sindon No. 1 well, and completed the same to the formation known as the Sunburst sand, on or about the 18th day of September, 1922, in a diligent and workmanlike manner to such depth as was deemed an adequate test of the oil and gas content of the first commercial oil sand, in compliance with the terms and conditions of said

lease, and defendant obtained therein a commercial gas well; and that thereafter, on or about the 15th day of October, 1922, the defendant, The Ohio Oil Company, commenced the drilling of a well upon the Irving H. Baker Oil and Gas Lease, known as Irving Baker No. 1 well, located on the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4, Township 35 North, Range 2 West, and defendant completed same to the formation known as the Ellis sand as a commercial oil well on or about the 27th day of January, 1923, and that at all times since the completion of said Irving Baker No. 1 well, the said Irving H. Baker lease has been developed and produced by The Ohio Oil Company and has produced oil in commercial quantities.

II.

That the plaintiffs herein, ever since the completion of said I. Sindon No. 1 well above mentioned, and ever since the completion of the above-mentioned Irving Baker No. 1 well above mentioned, have claimed to be and are and now claim to be the owners of interests therein under and pursuant to the terms of said leases and said Operating Agreement and Assignment of interests thereunder, copies of which are attached to Plaintiffs' Complaint herein.

III.

That pursuant to the terms of said Operating Agreement, the defendant herein, ever since the completion of the I. Sindon No. 1 well above mentioned [55] and the Irving Baker No. 1 well, above mentioned, has rendered to the plaintiffs herein

monthly statements showing the actual cost and expenses of developing and operating said lands and leases, and defendant has remitted to plaintiffs for those months wherein said statements showed a credit balance, all proceeds of oil and gas sold from the interest of the plaintiffs over and above the amount necessary to reimburse the defendant for expenditures made by it for the account and interest of the plaintiffs herein, and the plaintiffs herein at all of said times, through their duly authorized agents and representatives, had access to the buildings, lands and property mentioned in said Operating Agreement for the purpose of examining the operations thereunder and the production therefrom, and at all reasonable times during business hours, plaintiffs had the right to examine the books and records of the defendant insofar as they pertained to the operations conducted under said Operating Agreement, and during all of said time plaintiffs were duly acquainted with the actual costs and expenses of developing and operating said lands.

IV.

That during all of the time subsequent to the completion of the first commercial oil or gas well upon the premises described in said Operating Agreement, up to the 31st day of January, 1943, The Ohio Oil Company made full, true and correct monthly statements in writing to the plaintiffs herein which disclosed upon their face the total amount of monthly oil production from the lands described in said Operating Agreement and the

price at which the same was sold or accounted for, and the actual cost and expense of developing and operating said lands and leases, and for those months wherein said statements showed a credit balance, proper remittances for such payments were made by defendant to plaintiffs covering all proceeds of the oil and gas sold from the interest of plaintiffs herein over and above the amount necessary to reimburse the defendant for expenditures made by it for the account and interest of the plaintiffs herein. Said payments were made by check of The Ohio Oil Company drawn to the order of plaintiffs herein respectively under the terms of said Operating Agreement and were duly and regularly transmitted and received by the said plaintiffs, and this defendant [56] further Alleges that it made such statements and such payments during each and every month during said entire period last mentioned to the plaintiffs in the manner and for the price at which said oil and gas production was sold and accounted for, and said statements and payments so delivered and made as aforesaid by defendant, The Ohio Oil Company, were accepted and received by the plaintiffs without objection, protest or complaint, save and except for the objections and protests particularly specified in paragraph IX of the Second Defense herein, and said checks were presented for payment by the plaintiffs and the various amounts thereof were received by the plaintiffs, each of whom has ever since kept and retained the proceeds of said checks; that at the time of receiving said statements and payments

as aforesaid, the plaintiffs knew that this defendant, The Ohio Oil Company, had made the charges and incurred the costs and expenses complained of in plaintiffs' Complaint herein, and that deductions were made by this defendant, The Ohio Oil Company, for the purpose of defraying and liquidating plaintiffs' proportionate share of such costs, expenses and charges.

V.

That by the acceptance of said statements and payments and the retention of the said monthly payments for oil and gas purchased or sold by this defendant, The Ohio Oil Company, and by reason of each and all and every of the matters and things heretofore in this separate defense set forth, said plaintiffs are now and forever ought to be estopped from denying the right of this defendant, The Ohio Oil Company, to make the charges, costs and expenses plainly set forth in said monthly statements and the deductions for charges, costs and expenses of operations as set forth therein, and plaintiffs ought to be estopped from claiming or demanding reimbursement for such deductions or any part thereof, or from asserting any indebtedness owing from defendant to plaintiffs herein by reason of such deductions, or any part thereof, as in Plaintiffs' Complaint set forth and alleged or otherwise, or at all. A full, true and correct copy of the monthly statement rendered by defendant herein to the plaintiff, Potlatch Oil & Refining Company, for the month of June, 1927, showing the costs,

charges and expenses of development and operation of [57] the said properties described in said Operating Agreement and receipts from oil and gas produced therefrom, is hereto attached and marked Exhibit "C" hereof, and a similar statement was made and rendered for the same month by the defendant to Inland Empire Oil & Gas Syndicate, and this defendant Alleges that similar monthly statements in substantially the same form as to subject matter and differing from Exhibit "C" hereto attached only as to the month in question and the amounts of oil or gas produced and sold and amount of payments received from same and costs and expenses of development and operation, were rendered and delivered to plaintiffs during each of the months between the date of the completion of the first commercial oil or gas well and the 31st day of January, 1943, all of which statements showed upon their face the actual costs, charges and expenses of developing and operating said lands and leases and all proceeds from the sale of oil or gas produced or sold from said premises and the share of the respective plaintiffs therein for those months where said statements showed a credit balance, each of said statements was accompanied by a check remitting to each of the plaintiffs herein the amount of such proceeds payable to each plaintiff at the date of such monthly statement, and all of said statements were accepted and retained by the plaintiffs herein and all of said monthly payments were accepted and retained by plaintiffs herein, and defendant Alleges that the total amount of such pay-

ments remitted to plaintiffs herein by the defendant between the date of the completion of the first commercial oil or gas well under the terms of said Operating Agreement and the 31st day of January, 1943, equalled or exceeded the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00).

Wherefore, the defendant, demands Judgment against the plaintiffs herein, and that the plaintiffs' action be dismissed upon the merits and that this defendant have and recover from plaintiffs its costs of action.

W. H. EVERETT,
Attorney for Defendant,
The Ohio Oil Co.

LOUIS P. DONOVAN,
Attorney for Defendant,
The Ohio Oil Co. [58]

EXHIBIT "A"

August 8th, 1925.

Ohio Oil Company,
Casper, Wyoming.

Attention: Mr. Firmin:

My dear Mr. Firmin:

Pursuant to the conference had at Shelby yesterday between yourself, representing the Ohio Oil Company; Mr. Wilson, president of the Inland Empire Oil Syndicate, a common law trust, and Mr. Jones, president of the Potlatch Oil and Refining Company, a corporation, and the writer of

this letter, as the attorney for the last mentioned associations, concerning the dispute which has arisen over the interpretation of the agreement dated June 15th, 1922, entered into by and between the Troy-Sweet Grass Oil Syndicate, a common law trust, and the Ohio Oil Company, a corporation, and at which conference I agreed to reduce to writing and send to you a statement of the more important items of this difference of opinion.

Under the terms and conditions of said contract, we most respectfully insist that the Ohio Oil Company in the operation of what is known as the Baker Lease covering the

Southwest quarter (SW $\frac{1}{4}$) of Section Three (3);

Southeast quarter (SE $\frac{1}{4}$) of Section Four (4);

Township Thirty-five (35) North, of Range Two (2), East of the Montana Meridian,

has no right or authority under the terms of said contract to charge against said lease the following items:

(1): No part of the expense for the construction or operation of the Sunhio Water Plant, which amounts to approximately \$37,000.00 and that the associations we represent be credited back with that amount of money.

(2): That under the terms of said contract, you have no right or authority to charge a ten per cent overhead charge against said lease and that this

amount of ten per cent be credited back as above indicated.

(3): That under the terms of said agreement, you have no right or authority to charge any field auto expense against said lease and that the various amounts heretofore charged against said lease for field auto expense be credited back.

(4): That under the term of said contract, your company has no right to charge against said lease any part of the construction cost of what is known as the Main Swayzee Camp.

(5): That under the terms of said contract, the Inland Empire and the Potlatch Oil Company are entitled to additional credit of ten cents per barrel on all oil sold since June 15th, 1925, in addition to the amount heretofore credited them on the sale of oil, June 15th, 1925, being the date on which the International Refining Company entered said field and has been paying at all times since for any and all oil delivered to it a price amounting to ten cents in excess of the Field posted price in the Kevin-Sunburst Field.

The terms of said agreement provide that the Ohio Oil Company shall market all oil or gas produced from said above-described lands and account to the Troy-Sweet Grass Oil Syndicate, of which the Inland Empire and the Potlatch Company are the successors in interest, for an undivided forty-five per centum (45%) of the proceeds thereof, at the prevailing market price at the wells for said oil, after [59] deducting all royalty oil and gas or

the proceeds thereof. That the Ohio Oil Company shall be reimbursed for its expenses in the drilling of said wells solely from the Inland Empire's and Potlatch Oil Company's proportion of the oil and gas produced and sold from said land. The contract also provides that the first well drilled shall be, what is known as, a "Free Well" and that in the event it shall prove to be a commerical well that the Ohio Oil Company shall continue the work of developing and operating said premises in as diligent a manner as field and market conditions warrant and as is consistent with good business management. That it will pay all costs and expenses of developing and operating said land as provided in said contract and charge the party of the First Part forty-five per centum (45%) thereof.

In the conversations leading up to the signing of said agreement, Mr. Jones, who was president of the Troy-Sweet Grass Oil Syndicate, and Mr. Wilson and several other persons who were interested in said syndicate, brought up with the representatives of the Ohio Oil Company, the question of what should be included in the cost that could be charged against the Troy-Sweet Grass Oil Syndicate, and insisted that there should be no charge made against the said Troy-Sweet Grass Oil Syndicate and its successors and in interest, save and except the actual expense incurred on the lease itself as they had been informed that in these operating agreements unless otherwise provided charges similar to the ones hereinabove objected to were commonly charged by the operating company,

which would be the Ohio Oil Company in this case. It was agreed by the representatives of the Ohio Oil Company that the charges that could be made against the Troy-Sweet Grass Oil Syndicate were simply the charges and expenses incurred within the four corners of the lease. Afterwards, when said written agreement was brought back for the purpose of being signed, Mr. Jones, and his people had their attention called to the following phrase in said written agreement:

“But in no case shall said party of the First Part be finally held or charged beyond its share of interest in the production and equipment from, in or upon said lands”;

and after reading the same, they believed that it conveyed the meaning which they had heretofore agreed upon in the oral negotiations that this phrase would only permit the Ohio Oil Company to charge against the Troy-Sweet Grass Oil Syndicate and its successors in interest the charges and expenses of production and equipment that should be incurred on, in or upon said land; and in consequence of which, Mr. Jones signed said agreement, as President and Mr. Harsh attested the same, as Secretary of the Troy-Sweet Grass Oil Syndicate, a common law trust.

The foregoing items all relate to the question of what items and expenses can be charged by your company against the Potlatch and the Inland people under the terms of said contract, except number

five. It is but opinion that a judicial interpretation would sustain the contention of our people.

In addition to the foregoing objections to the interpretation of said contract by the Ohio Oil Company, we also have the further following items;

(6): You have charged against said lease, a price of \$2.00 per foot for the use of your own tools in drilling several wells on the Baker lease. This charge in our opinion is thoroughly excessive and that the practically universal price in the field, outside of yourself, for the use of tools is not to exceed \$1.00 per foot and we should receive a corresponding credit.

(7): An examination of your records shows that you have reported that the cost of the nine wells on the Baker lease averages \$14,800.00. I believe that you will not deny that under the terms of said agreement you are charged with good business management and from an examination which has been made in the field we are thoroughly convinced that under no circumstances had these wells ought to exceed an average cost price of \$10,000.00. In any event, there should be a rebate of not less than four thousand dollars on the average cost of each of said nine wells. [60]

From the experience of the writer of this letter and from the practically universal statements of the operators in the Kevin-Sunburst Field, it would seem that the average cost of these nine wells is on the average of more than four thousand dollars over and above the amount for which said wells

could have been drilled by the exercise of proper business management.

(8): You made a net return to the State of Montana on the net proceeds tax under the laws of this state and paid the state the sum of \$831.45 as and for the year 1923. You understand that this is a tax entirely separate and distinct from the production tax levied by the state; and we most strenuously insist that you have no right or authority under the law to make any such return with reference to the net proceeds of either one of these companies by the reason of the fact that these companies have other leases and other operations which must be taken into consideration in the making of their net proceeds tax; and your action makes it impossible for us to keep from paying more than we are entitled to pay under the law of this State. We have read the letter addressed to your Company at Findlay, Ohio, for the attention of Mr. Billstone written by the State Board of Equalization of this state in which the state board says that they want you to make a one hundred per cent statement in those cases where you have only a working interest. We call your attention to the following paragraph in the closing part of this letter, which reads as follows:

“We may be wrong in our viewpoint, but we request that you make the returns as above suggested and take the matter up later before the full board if desirable.”

This letter is intended as an absolute demand

that insofar as the Inland Empire and the Potlatch people are concerned, you pay no attention to this letter, as we insist that you have the right to make our own net returns, including any money received from your company as well as from other sources. We do not believe that the law of the State of Montana can in any way hold you liable to the State of Montana even though our companies neglected or failed or refused to pay their net income tax to the state. However, if your legal department should insist that they have in their mind any serious doubt upon that question, we are perfectly willing for your company to hold back such an amount of money on our account as will protect you providing that our companies, or either one of them should fail or neglect to make or pay taxes due the state, until such time as proof has been submitted to you that both of these companies have fully complied with the laws of the State of Montana in that respect.

You can see without further elucidation the inequitable position we are placed in by such a procedure.

I believe that the foregoing embraces all of the points taken with you verbally at Shelby, Montana, yesterday, covering the main points of the contention upon our part with reference to the interpretation placed on said operating agreement by your company. As I understand from your conversation after further investigation upon your part you will communicate with me further concerning this matter.

Trusting that we may be favored with as early a reply as is consistent with the investigation made by you, we remain

Respectfully,

FREEMAN, THELEN & FRARY,

By /s/ J. W. FREEMAN.

JWF:dr. [61]

EXHIBIT "B"

The Ohio Oil Co.,
Casper, Wyoming.

September 12, 1925.

Freeman, Thelen & Frary,
Attorneys at Law,
Great Falls, Montana.

Attention: Mr. J. W. Freeman.

Gentlemen:

On August 5th, you wrote us relative to a dispute which has arisen over the interpretation of the operating agreement of June 15, 1922, between the Troy-Sweet Grass Oil Syndicate and The Ohio Oil Company. You set forth the important items involved in this difference of opinion.

I apologize for not having replied to your letter sooner but it was necessary that I await the arrival of Mr. Hurley from Findlay, Ohio, in order that we might have a general conference about the entire matter. Just yesterday we concluded our consideration of the different contentions made by you

in your letter, and in order to cover them fully I shall discuss them in the same order that you followed.

You stated:

(1) That in the Operation of What Is Known as the Baker Lease, the Ohio Oil Company Has No Right or Authority to Charge Against Said Lease. The Expense for the Construction or Operation of the Sunhio Water Plant, Which Amounts to Approximately \$37,000.00, and You Asked That the Associations You Represent Be Credited Back With That Amount of Money.

It must first be borne in mind that the agreement of June 15, 1922, obligates The Ohio Oil Company to develop and operate the Baker lease for oil and gas purposes and do so in a diligent and business like manner. It must also be borne in mind that this lease is surrounded by other acreage under lease and under development for oil and gas and that, by reason of development on said adjoining lands it has been necessary to vigorously develop and operate the Baker lease. It should not be disputed that water is an absolute necessity in the development and operation of any tract of land for oil and gas. In the early development of the Baker land, water in the vicinity thereof was extremely scarce and very expensive to obtain. The Sunburst Oil and Gas Company held the key to the water situation by owning or controlling a number of reservoirs. The Ohio Oil Company succeeded in making arrangements with the Sunburst Oil and

Gas Company to take over the management and control of these various water reservoirs and thereafter this business was also known as the "Sunhio Water Account." The arrangements between the two companies was that each should have the right to take water from the various reservoirs for operating purposes on lands being developed by or for the two companies. Neither company has the right to exhaust the water from one reservoir or another, but each must take the same on a fair and equitable basis. The Baker farm proved to be productive of oil in commercial quantities, and, in order to develop said tract of land in good and business-like manner, it became necessary to secure an adequate supply of water. In view of the fact that The Ohio Oil Company was developing and operating other lands in the general vicinity of the Baker land, it decided to construct a general pipe line system and connect all leases with the various reservoirs containing water in that general vicinity. This pipe line system, of course, involved the main transportation line and branch lines on the various farms. Most of the pipe is 3", with some 4" being used at particular points. The Baker farm has only been charged with its proportionate part of the entire cost of the general transportation system. Since the Sunhio Water Account does not involve anything other than the maintenance of the reservoirs, in order to afford an adequate supply of water for drilling and operating purposes, it became necessary to construct pipe lines for the transportation of

water from the source of supply to the leased premises, wherever said premises might be located. [62] Therefore, it was simply a question of whether or not it would be cheaper and better to construct a general pipe line system for the purpose of serving all the farms under development and operation by The Ohio Oil Company, or to construct separate lines for the various reservoirs to each lease. We chose the former method because it is far superior to the latter from the standpoint of giving service and for the further reason that it is less expensive. It can not be disputed that a better and more adequate supply of water can be secured through a 3" pipe line than a 2" line. No one can successfully contend that the Baker farm or any other farm can be properly developed and operated with less than a 2" line, at the time these lines were constructed, water was scarce and we were wholly dependent upon the same for development for drilling purposes as well as operating purposes. Consequently the main question involved in your first contention rests primarily upon whether or not water was a necessity; and, if so, the means of securing the same was up to The Ohio Oil Company under its contract. It arranged to secure water from the best and most adequate water supply in the vicinity of the Baker lease and decided that the system it employed was the best for all concerned and likewise the cheapest. The sum of \$37,000.00 which has been charged, not only covers the cost of the pipe lines for the transportation of water, from the reservoirs or source of supply to the Baker lease, but likewise

covers the cost of the branch lines on the Baker lease and the cost of the water itself. Perhaps a comparison of the cost of pipe lines direct from the Baker farm to the various reservoirs, with the cost of the system that was installed, would be enlightening. If a pipe line had been constructed from the Baker farm to the source of water supply for the purpose of serving that farm alone, we might have built said line out of 2" pipe instead of 3" and 4"; We have found that the cost of 2" pipe line for the purpose of serving the Baker farm alone would have cost the farm approximately \$44,000.00, which does not include the water equipment, and pipe lines actually on the farm. This 2" pipe line would connect the Baker farm with the Davey and DeWald reservoirs to the northeast and the Pewters and Simmerman reservoirs to the southeast. You may ask why we would have constructed a 2" line to these various reservoirs, and the answer is that, under the arrangement we are able to make with the Sunburst Oil and Gas Company, each company had the absolute right to draw from all of said reservoirs for water but neither company had the right to exhaust any one reservoir or even take any definite and certain amount of water therefrom. In other words, the various reservoirs furnished the source of supply and water could only be taken from the entire supply on a uniform basis. Consequently, if we had connected the Baker farm with the Davey reservoir alone (it being the nearest one), we would no doubt have experienced the situation of being without water at some time or other,

to say nothing of the fact that we were not able to make that kind of arrangement. No competent operator would have dared rely upon one reservoir for a source of water supply, but on the contrary any competent operator, in the exercise of good business judgment would, under the circumstances, connect the farm with the four reservoirs mentioned in order to be in a position at any and all times to adequately and properly take care of the required development and operation of the lease.

By the comparison of costs, you can readily see that the plan that was adopted and followed by the Ohio Oil Company has proved more economical in the development and operation of the Baker Farm to date.

(2) That Under the Terms of Said Contract, We Have no Right or Authority to Charge a 10% Overhead Charge Against Said Lease and That This Amount of 10% Credited Back.

This charge involves a universal custom in the business. It is a necessary charge against any part-interest owner, whoever he may be, for, without question, such part-interest owner should contribute some part of the outlay that overhead is intended to cover. The contract required The Ohio Oil Company to manage and develop these lands in a good and business-like manner, and The Ohio Oil Company is a corporation made up of many officials whose duties are to properly supervise and manage the business of developing and operating oil lands; and while they do not devote their entire time to

the development and operation of any one [63] lease, and while said company does not use its entire organization to develop and operate any one lease, nevertheless said organization as a unit is serving each and all tracts of land under development. Our contract contemplates and requires that that organization look after and supervise the development of this particular tract of land. The Company has available in the field at its camp all kinds of tools and machinery required in the development and operation of oil lands generally and, while a complete set of such tools cannot be charged to any particular farm, on account of excessive investment, nevertheless, by having the same, it is in position to render more valuable service in the development of said lands than otherwise, for which overhead should properly be allowed. Our contract provides that we must account to the part-interest owner for all expenditures and all receipts. This requires the use of an accounting department; and while we have not employed separate accountants to look after each and all of these details, which, if done, would be chargeable against the part-interest owner, nevertheless, our general accounting department has rendered this service. In other words, we could go on step by step showing wherein this official, or that one, this department, or that one, and this equipment or that, does in fact render some valuable service to the entire enterprise of developing and operating these particular lands; that these are necessities and are in fact required and expected under the scope of this contract as

well as that of any other contract of similar purpose. Therefore, it would seem reasonable to assume that the only question that could arise under this contract (and under this particular contention), is whether or not 10% is a fair and reasonable overhead charge. Our experience has taught us that it is. The experience of many other operators throughout the United States engaged in similar business has taught them that 10% is a fair charge. Other industries, such as railroad, etc., make a similar charge. Just as an isolated example, and one that we feel you will appreciate. You know that Mr. McFayden has, as General Manager of The Ohio Oil Company of this region, devoted considerable of his time to supervising the business of developing and operating lands in the Kevin-Sunburst field; that he has devoted considerable time to the development and operation of the Baker lease—yet his salary or no part thereof has been charged to the Baker farm. However, the 10% overhead charge is intended in part, to cover that service rendered.

(3) That Under the Terms of Said Agreement, We have No Right or Authority to Charge Any Field Auto Expense Against Said Lease and That Various Amounts Heretofore Charged Against Said Lease for Field Auto Expense Be Credited Back.

In investigating this item, we find that the Baker Lease has been charged with a proportionate part of the auto expense of four cars; that of Mr. Yealy, the Superintendent, and three cars used by men in the field who are required to travel from one lease

to another. The entire charge amounts to about \$600.00 a month and is apportioned between the various farms on a per well basis. With 40 producing wells, 9 of which are on the Baker farm, we have charged your farm with 9/40 of that expense, and, of course, your proportion is 45% of that charge. The whole thing amounts to less than \$60.00 a month. It can not be disputed that those cars are actually serving the Baker lease. The charge involves only the maintenance and depreciation. Certainly when you stop to realize that these cars are actually serving this farm in the manner hereinbefore described, you should realize that the charge is very reasonable.

(4) That Under the Terms of Said Contract, This Company Has No Right to Charge Against Said Lease Any Part of the Construction Cost of What Is Known as the Main Swayzee Camp.

It must be borne in mind that in the development and operation of the Baker lease it has been necessary to use certain buildings, such as bunk-houses, cook-houses, wash-houses, tool-houses and blacksmith shop, for the purpose of housing and feeding the workmen and performing certain duties incident to general development and operating work. We do not believe that your objection challenges this [64] necessity, but rather challenges the right of the company to charge this lease with a proportionate share of the main camp in the field. The main Swayzee Camp was constructed for the purpose of developing and operating all the leases in the vicinity and to eliminate the necessity of building small camps upon each lease. Experience has taught us that a

main camp is much more economical and gives the company an opportunity to render a greater degree of efficiency in development work. We have made a comparison of the cost of a camp on the Baker farm with your part of the cost of the Swayzee camp. We find that you have been charged approximately \$4,500.00 whereas we find that it would have cost approximately \$10,000.00 to have placed on the Baker farm a camp large enough to have successfully and properly developed and operated said lands. This camp would have required the construction of four bunk-houses at a cost of approximately \$3,600.00; one cook-house, \$1,200.00; one wash-house, \$1,500.00; one tool-house, \$2,200.00. The Swayzee camp has been actually used for the purpose of assisting in the development and operation of the Baker lease and no separate camp has been constructed upon the Baker farm. We believe the figures above set forth should indicate the fairness of the system that has been followed.

(5) That Under the Terms of the Contract, the Inland Empire and Potlatch Oil Companies Are Entitled to an Additional Credit of 10c Per Barrel on All Oil Sold Since June 15, 1925, in Addition to the Amount Heretofore Credited Them on the Sale of Oil (June 15, 1925), Being the Date on Which the International Refining Company Entered Said Field and Has Been Paying at All Times Since for Any Oil Delivered to It, a Price Amounting to 10c in Excess of the Posted Price in the Kevin-Sunburst Field.

You quote from the lease which provides that you

are to receive payment on a basis of the prevailing market price at the wells for said oil.

On this question, we believe that the contract is conclusive of this matter. That is, it provides for an accounting on the basis of the prevailing market price at the wells, and this price, as you know, is posted regularly when a change is made in the same. The ten cents in excess thereof is merely a premium paid by the International Refining Company. It is not, under any circumstances, the field posted price or the prevailing market price. In fact, it is necessary before ascertaining what price the International Refining Company shall pay, that it shall first know the field posted price or the prevailing market price at the wells. We understand that the International is now purchasing some of the royalty oil from the Baker farm, and in its contract it provides that it shall pay ten cents per barrel at all times over and above the Posted Field Market Price as Fixed and Posted in the Kevin-Sunburst Oil Field by the Ohio Oil Company or the Illinois Pipe Line Company. In order to entitle your clients to receive an accounting because of the premiums paid, it would be necessary for our contract to contain language specifying that they should receive the proceeds on the basis of the prevailing market price at the wells for said oil and, in addition thereto, any premium that is paid by any other bona fide purchaser of oil in the field. Without a prevailing market price to be used as a basis, The International is unable to figure the price that it shall pay, and we therefore, cannot

see where this contention is fair or reasonable within the meaning of the agreement.

Under your fifth contention, you further specify that it was discussed between your clients and representatives of this company, prior to the signing of the agreement, that the Troy-Sweet Grass Oil Syndicate should only be charged with the actual expense incurred within the four corners of the lease.

We contend that all charges that have been made are in fact for the actual benefit of this lease and that it is physically impossible to endeavor to draw and establish a mental or imaginary line around the four corners of this lease in order to determine the amount of money that shall be charged for the development and operation thereon. The real fact in the case is that the joint interest owners shall be responsible for 45% and 55% respectively of all charges incurred in the development and operation of said lands. It cannot make any real difference [65] whether certain work is performed off the lands or not, provided said work actually and in fact does benefit said lands. It would be impossible to do and perform each and every act required in the development of oil and gas on this lease, within the four corners thereof. Take the water line for example. One might easily find that he had no water supply within the four corners of the lease and yet it is impossible to operate a lease without water and consequently the operator would be required to haul water from other lands by the use of a tank wagon or any other facility or by use of a pipe line from other premises, and, if your contention in this case is

correct, The Ohio Oil Company would not be permitted to charge you for any expense incident to that pipe line after it left the boundary line of your lease, although you can easily see that it is imperative that some means be used to convey water from other land to the leased premises. Again, drilling equipment might need repairing, for example and according to your contention, it would be necessary for The Ohio Oil Company to perform that work upon the lease or else not charge you for it. The representatives of the Ohio Oil Company who made this contract with your clients do not recall any conversation relative to making charges against the Troy-Sweet Grass Oil Syndicate for the actual amount of expenses incurred on the lease itself, or as you say within the four corners thereof. The quotation that you make is not applicable to the question here involved, for the reason that that is a clause stating that The Ohio Oil Company shall look to the proceeds belonging to the Troy-Sweet Grass Oil Syndicate, in order to reimburse itself for the cost of developing and operating said lands, and that if said proceeds were insufficient to fully reimburse it, that it would be then required to stand the deficiency itself. In other words, this was and is a contract wherein The Ohio Oil Company was obligated to take all the chance incident to the development and operation of the leased lands and should look solely to production and equipment for reimbursement. We believe that the contract is a fair one and that what the Troy-Sweet Grass Oil Syndicate desired at the time the agreement was made

was the development and operation of said land for oil and gas purposes. They did not discuss with us nor did they express themselves in the light that the only expense chargeable to them would be the expense incurred within the four corners of the lease. We contend that we have at all times developed and operated this land in an economical and business-like manner, having due regard to all the existing circumstances.

(6) That We Have Charged the Lease With a Price of \$2.00 Per Foot for the Use of Our Own Tools in Drilling Several Wells: That in Your Opinion the Charge Is Excessive on the Ground That the Universal Price in the Field for the Use of Tools Is Not to Exceed \$1.00 Per Foot and That You Should Receive a Corresponding Credit.

We beg leave to advise that we have charged for the use of our own tools for drilling done under labor contracts on the Baker lease the actual amount that is charged throughout the field for the use of such tools; that our price is merely the difference between a drilling contract, whereby the contractor furnishes all the tools, and a labor contract, whereby the contractor does not furnish any of the tools. In other words, it was possible at the time the wells were drilled with the company tools, for an operator to make a contract for the drilling of a well at \$4.00 per foot and the contractor furnish all the tools; and it was also possible for an operator to make a contract for the drilling of a well at \$2.00 per foot and the operator furnish all the tools. We believe

that if you will look into this matter, you will find our statement to be correct and sufficient to convince you that we have not made an overcharge for the use of our own tools used in the drilling of wells under labor contracts on the Baker lease.

(7) That an Examination of Our Records Shows That the Average Cost of the 9 Wells Drilled on the Baker Lease Was \$14,800.00; That the Same Should Only Have Cost an Average of \$10,000.00; You Therefore Request a Rebate of Not Less Than \$4,000.00.

It is almost next to impossible for any operator to determine in advance what an oil well will cost to drill. However, we are satisfied that the wells on the Baker lease that have been drilled by us or for us have cost in no cases more than was absolutely necessary under all the circumstances. Regardless of whether or not other wells on other lands have been drilled for \$10,000.00 per wells, we contend that the cost involved is determined solely from the facts and circumstances existing in each particular case. Possibly you are not aware of the fact that drilling on the [66] Baker farm is different and more expensive than in many other parts of the field. We always employed the very best of the contractors and drilled some of the wells in the early days of this field when drilling was more expensive than now, and any fair minded man with knowledge of the facts will tell you that the amount that it cost The Ohio Oil Company to drill these nine wells is not excessive. We would be perfectly willing and glad to go over our expenses incident to the drilling of these

wells and also the logs of these wells and show you what was done in each case, in an effort to satisfy you that no advantage has been taken of you and that none was ever contemplated by us.

(8) That We Made a Net Return to the State of Montana, on the Net Proceeds Tax for 1923 on a Basis of 100% Return, and That Our Action Makes It Impossible for You to Keep From Paying More Than You Are Entitled to Pay Under the Law of the State.

You indicate that you are familiar with all the facts and circumstances incident to the return that we made. We confess that the matter of tax returns, under the regulations of the Board, was somewhat complicated. At the same time, if it could be shown that the return we made was not a 100% return, we can see no reason why the Board should object to allowing you to make a supplemental return and thereby secure and derive the benefits that you claim to be entitled to but did not receive. However, we are perfectly willing to endeavor to work out some plan that will be mutually agreeable; and in this connection we invite you to make some suggestions as to the proper method to be followed in making net proceeds returns.

We are very sorry to find that your clients feel that some advantage has been taken of them and we earnestly hope that the explanations that we have given here will at least be a starting point towards convincing them that everything that the Ohio Oil Company has done in connection with the develop-

ment and operation of the Baker lands has been fair and reasonable. We regret exceedingly to have you make the statement that The Ohio Oil Company has not performed the work required of it under the contract in a good and business-like manner. From our experience in developing and operating oil land all over the country, we have demonstrated that the methods and practices of this company, over the life of a lease or field, are far more economical than the methods employed by many other operators. We feel confident that the management of the Baker lease has been above the average.

We trust that you will consider your various objections in the light of the explanations herein contained.

Very truly yours,

/s/ T. B. FIRMIN,
Cashier. [67]

EXHIBIT "C"

Form 350

Findlay, Ohio, June 30, 1927

Bill No. W-1092-27

Potlatch Oil & Ref'g Company

Baker & I. Sindon

In Account With The Ohio Oil Co.

Summary

Oil Expense		195.52
10% of above—Overhead Expense.....		19.55
Service Department		93.48
Gas Sales	10.83	
Other Income	29.73	
Oil Credits	2,764.24	2,804.80

Net Credit balance during June, 1927..	2,496.25
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Calculations Checked.

Office Copy. July 28, 1927. [68]

Form 350

Findlay, Ohio, June 30, 1927

Bill No.

Potlatch Oil & Rfg. Co.
In Account With The Ohio Oil Co.

Sheet #1

Detailed Statement of Oil Expense
Irving H. Baker Farm

Foreman: Labor.

		Gross	Your 22½%
9/75 of 15 days @ 250.00 per mo.....	15.00	.....	.....
9/75 of 15 days @ 250.00 per mo.....	15.00	.....	.....
Expense on field autos 9/76 of 900.00.....	106.58	136.58	30.73

Pumping labor.

30 days pumping @ 4.25.....	127.50	.....	.....
30 days pumping @ 4.25.....	127.50	255.00	57.37

Repairs Well Equipment: Labor.

12 days pull, run & fish rods & tub. @ 4.25	51.01	.....	.....
6 days pull & fish rods & tub. @ 5.00.....	30.00	.....	.....
2 days pull & run rods & tub. @ 4.00.....	8.00	89.01	20.02

Repairs Well Equipment: Tmg. & Trkg.

5 days pull & fish rods & tub. @ 12.00.....	60.00	13.50
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Repairs Well Equipment: Material

10 13/8" Lubricups.....	1.90
10 11/4" Superior cups.....	2.30
4 11/4" Superior cups.....	.88	.....	.....
6 9/16" stfg. box rings—rubber.....	.36	.....	.....
12 15/8" valve cups.....	2.78	.....	.....
Carr. overcharge on 17/8" sucker rod elevator in May	14.59	6.45	1.45

Repairs Surface Equipment: Labor.

1½ days rep. water line & start eng. @ 5.50.....	8.25	.....	.....
6 days repair lines & keep time 4.00....	24.00	.....	.....
3½ days rep. lines & eng. @ 4.25.....	14.87	.....	.....
2½ days rep. water line & pain Pewter Pr. @ 4.25.....	10.63	.....	.....
1 day rep. eng. block brakes.....	4.00	61.75	13.89

Repairs Surface Equipment: Tmg. & Trkg.

Haul 2 tanks water.....	12.00	.....	.....
3 hr. haul eng. cylinder @ 3.50.....	10.50	.....	.....
Ditching lead line—450 ft. @ 20¢ ft.....	90.00	.....	.....
1½ days filling ditch @ 17.00.....	25.50
Filling ditch—450 ft. @ 1½¢ ft.....	6.75	144.75	32.57

Total Sheet #1.....	166.63
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Form 350

Findlay, Ohio, June 30, 1927

Bill No.

Potlatch Oil & Rfg. Co.
In Account With The Ohio Oil Co.

Sheet #2

Oil Expense Continued

Irving H. Baker Farm

Repairs Surface Equipment : Material.	Gross	Your 22½%
2 2" x 1½" C. I. Bushing.....	.16	.....
2 ¾" collars .....	.10	.....
2 ¼" x 2" nipples.....	.04	.....
1 2" I. B. Stop.....	1.77	.....
10 gal. Battleship gray paint.....	27.70	.....
1 ¾" Br. air cock.....	.16	.....
1 ¾" angle valve.....	.47	.....
1 ¾" #2 sight feed oil cup.....	1.83	.....
1 #63 driving bar spring guide.....	.37	.....
1 #46 driving bar spring.....	.07	.....
1 #44 roller pin.....	.15	.....
1 #8 latch spring.....	.06	.....
16 yds. sand & gravel @ 50¢.....	8.00	.....
1 1½" C. I. plug.....	.04	.....
1 1 Boson lubricator.....	7.81	.....
4 2" x 4" nipples.....	.40	.....
2 2" x 2" nipples.....	.14	.....
2 1" x cl. nipples.....	.04	.....
2 hr. cutting on volume tanks @ 3.50....	7.00	.....
2½ hr. welding volume tank @ 3.50.....	8.75	.....
2 Wrenches & 1 hammer.....	3.48	67.94 15.29

Supplies.

1 #1 Toledo pipe stock & dies.....	29.40	.....	.....
1 24" Trimo wrench.....	2.39	.....	.....
20# White waste.....	3.80	.....	.....
1 5 gal. W. J. oil can.....	.82	.....	.....
1½ hr. weld 2" beamer stock.....	3.00	.....	.....
5 gal. Capitol St. cyl. oil @ 64¢.....	3.20	.....	.....
30 Gal. std. gas eng. oil @ 57¢.....	17.10	.....	.....
2 #6 Col. dry cells.....	.74	60.45	13.60

Total Sheet #2..... 28.89

Summary

Total Sheet #1.....	166.63	.....
Total Sheet #2.....	28.89	.....
Total Oil Expense.....	195.52	

Form 350

Findlay, Ohio, June 30, 1927

Bill No.

Potlatch Oil & Refining Company
In Account With The Ohio Oil Co.

Service Division Summary

Investment:	11.99	.....
Swayze Camp	11.99	.....
Expense:	89.87	.....
Swayze Camp	89.87	.....
Income: Swayze Camp.....	8.38	8.38
Net Total	93.48	.....

Form 350

Findlay, Ohio, June 30, 1927

Bill No.

Potlatch Oil & Refining Company

OK H. J. Allen

In Account With The Ohio Oil Co.

Detailed Statement of Camp Investment

		Gross	Your Int.
Swayze Camp:			
6 Blankets	3.00	18.00	.....
2 Hrs. making grate for incinerator.....	2.00	4.00	.....
5 Hrs. cut & weld burner for incinerator	3.50	17.50	.....
1 Hr. making grate for incinerator.....	2.00	2.00	.....
2 Hrs. making grate for incinerator.....	2.00	4.00	.....
1 Hr. making hinges for incinerator.....	2.00	2.00	.....
25 Sacks cement.....	5.25bbl	32.80	.....
4 Sax fire clay.....	2.50	10.00	.....
10% Discount on 42.80.....		4.28	.....
Reimburse P. R. Nason for 4 blankets returned	3.87 $\frac{1}{2}$	15.50	.....
1 Day laying gas line to incinerator.....	4.25	4.25	.....
9 Hrs. hauling dirt from incinerator.....	3.50	31.50	.....
To bedding sold during June, 1927.....		41.22	.....
1 1 $\frac{1}{4}$ x 1" C. I. Bushing.....	.04	.04	.....
2 1" Collars .....	.15	.30	.....
2 1 x 2" Nipples .....	.03	.06	.....
1 2 x 4" Nipples.....	.10	.10	.....
4 1 x 4" Nipples.....	.04	.16	.....
3 1" Ells.....	.08	.24	.....
1 1" I. B. Globe Valve.....	1.55	1.55	.....
3 1" Tees .....	.08	.24	.....
2 1" R. R. Lip Unions.....	.23	.46	.....
2 1 x 8" Nipples.....	.08	.16	.....
2 Hrs. hauling dirt for incinerator.....	1.50	3.00	.....
To bedding sold during June, 1927.....		6.00	.....
To charge blksmith shop labor in bldg. incinerator. This labor chgd to ex- pense May, 1927 in error.....		75.40	.....
Total		171.76	.....
Your interest 6.9813%.....			11.99

Detailed Statement of Camp Expense
Swayze Camp

		Gross	Your Int.
1	Myers Pump.....	5.68	.....
10	Yds. sand & gravel..... .50	5.00	.....
200#	White lead.....19.80 cwt	39.60	.....
1	Gal #3 Wall paint.....	3.25	.....
1/2	Gal #3 Wall paint.....	1.75	.....
2	Gal #11 Wall paint.....	3.25	.....
1/2	Gal #11 Wall paint.....	1.75	.....
	10% Disc. on 13.25.....	1.32	.....
17	Tanks drinking water May, 1927....	68.00	.....
200#	White lead.....19.80 cwt	39.60	.....
1	Gal Varnish.....	4.50	.....
5	Sax Fire clay.....	1.35	.....
3	2x2-14 Fir lbr. 14 ft.....	.12	.....
100	Ft. 1/4 round.....	1.25	.....
1	2/8 x 6/8-1 1/8 screen door.....	5.50	.....
4	Boxes tacks.....	.10	.....
3	Boxes brads.....	.10	.....
	10% Disc. on 9.13.....	.91	.....
100#	White lead.....	25.00	.....
1	Gal varnish.....	5.00	.....
2#	Burnt umber.....	.55	.....
	10% Disc. on 31.10.....	3.11	.....
8	Pkgs. Albastine.....	.75	.....
160#	Plaster.....27.00 ton	2.16	.....
	10% Disc. on 8.16.....	.82	.....
2	Pts. Black enamel.....	1.39 1/2	.....
1	24x28 D S Glass.....	2.55	.....
1/2	Pt. Duco paint.....	.75	.....
2	Sheets sand paper.....	.02 1/2	.....
	10% Disc. on 3.35.....	.34	.....
20	2x4-14 Lumber 187'.....	41.00 M	.....
8	2x4-20 Lumber 107'.....	45.00 M	.....
4	2x12-14 Lumber 112'.....	42.00 M	.....
45	1x10-14 shiplap 525'.....	41.00 M	.....
15	1x6-16 #3 Boards 120'.....	41.00 M	.....
600	Fire brick.....	.12 1/2	.....
5	Gal linseed oil.....	2.20	.....
3	Gal. turpentine.....	2.20	.....
20#	Smooth wire.....	.10	.....
	10% Disc. on 138.24.....	13.82	.....
2	4" Paint brushes.....	3.50	.....
1	3 1/2" Paint brush.....	3.00	.....
1	Lettering brush.....	.25	.....
1	Pt. paint solvent.....	.80	.....
	10% Disc. on 11.05.....	1.11	.....
3	Pkgs. Alabastine.....	.75	.....
	10% Disc. on 2.25.....	.23	.....
5	Qts. #3 Wall Paint.....	.95	.....

		Gross	Your Int.
1"	Lamp black.....	.70	.....
	10% Disc. on 5.45.....	.55	.....
	Contract price for painting & building incinerator.....	110.00	.....
	Wash house.....	140.00	.....
	House #18.....	25.00	.....
	House #24.....	30.00	.....
	House #17.....	30.00	.....
	House #19.....	30.00	.....
	House #20.....	70.00	.....
	Water Supply, May, 1927.....	25.00	.....
	To Laundry on 4 blankets rtd. by Nason	1.25	.....
1/2	Day grading streets.....	4.25	2.12
4	Days pumping water.....	4.25	17.00
1	Day rep. plumbing & gas line.....	4.25	4.25
1	Day cleaning camp.....	4.00	4.00
15	Days caretaker.....	4.00	60.00
5	Hrs. hauling trash.....	1.50	7.50
4	Hrs. grading roads.....	3.50	14.00
12	Hrs. hauling trash.....	3.50	42.00
	Contract price to screen in porch on house #20.....	5.00	.....
	Painting Brownlee house.....	20.00	.....
	Contract price painting pump house	5.00	.....
	Painting & whitewashing 10 toilets	70.00	.....
	Shingling & rep. 10 toilets.....	60.00	.....
	Repairing & varnishing houses #3, 4, 24, 17		
	To water 15, 19, 20.....	72.00	.....
	sold during June, 1927.....	3.00	.....
1	2"x4" Nipple .....	.10	.10
1	2"RR Lip Union.....	.63	.63
	Gas supply for June, 1927.....	5.00	.....
2	Days cutting weeds.....	4.25	8.50
1/2	Day pumping water.....	4.25	2.12
2	Days cutting weeds.....	4.25	8.50
15	Days caretaker.....	4.00	60.00
9	Hrs. hauling trash.....	1.50	13.50
4	Hrs. dragging streets.....	6.00	.....
1	Mo. water supply June, 1927.....	25.00	.....
	To water sold during June, 1927....	5.00	.....
	To credit Exp. a/c/w/ labor & material chgd in May, 1927, in building incinerator trfrd to Investment a/c	75.40	.....
	Total	1,287.26	.....
	Your interest 6.9813%.....	.....	89.87

Detailed Statement of Camp Income—House Rent

Swayze Camp :	Gross	Your Int.
Misel. Sales House rent for June, 1927.....	10.00	.....
E. B. McCann House rent for June, 1927.....	10.00	.....
R. Armonette House rent for June, 1927.....	5.00	.....
T. A. Bellecourt House rent for June, 1927..	5.00	.....
Misel. Sales House rent for June, 1927, ded. from P.R.....	90.00	.....
Total	130.00	.....
Your interest 8.9813%.....	.....	8.38

Statement of Gas Sales :

Israel Sindon Farm	Gross	Your 45%
Gas Earnings: Sales: 26.00	.....	.....
Less 8½% royalty..... 1.95	24.05	10.83

	Gross	Your 22½%
Statement of Other Income: Oil Prod. Farms.		
Irving H. Baker Farm.		
Gas Earnings: Sales..... 8.00	.....	.....
Less 1/8 royalty..... 1.00	7.00	1.57
Steam Earnings.....	106.15	23.88
Water Earnings.....	5.00	1.13
House Rent.....	14.00	3.15
Total Other Income.....		29.73

[Endorsed]: Filed April 27, 1948. [78]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated and Agreed by and between the Plaintiffs and Defendant above named, in the above-entitled action, by and through the undersigned, their attorneys of record, that for all purposes in or connected with the above-entitled action, the following facts are admitted as being true and correct, to wit:

1. That the assignment, transfer, and conveyance to the Inland Empire Oil and Gas Syndicate of an undivided one-half interest of said Troy-Sweet Grass Oil Syndicate in the oil and gas leases and Operating Agreement, in so far as same pertained to the Southwest Quarter of Section 3 and the Southeast Quarter of Section 4, Township 35 North, Range 2 West, Montana Principal Meridian, commonly known as the Baker Lease, referred to in Paragraph VIII, page 5, of Plaintiffs' complaint was made on January 1, 1923.

2. That Mr. F. E. Hurley, Mr. A. M. Sellery, Mr. L. J. Yealy, Mr. Virgil McCracken, Mr. F. A. Billstone, Mr. F. B. Firmin, Mr. Slim Hungerford, and Mr. John McFadyen, who is also known under the names of John McFayden, Jack McFadyen, and Jack McFayden, respectively, were in the employ of the defendant The Ohio Oil Company, in the respective [80] capacities and during the respective years (amongst others) hereinafter set opposite their respective names, to wit:

Name	Capacity	Years Employed
F. E. Hurley	Vice President in charge of Rocky Mountain Division	May 1921 to May 1925
	Vice President in charge of Land and Property Acquisition	May 1925 until his death on July 27, 1928
A. M. Sellery	Leaseman, Rocky Mountain Division	1917-1927
L. J. Yealy	General Superintendent at Shelby, Montana	September 1922 to March 1938
Virgil McCracken	Cashier at Shelby Office	January 1, 1923 to Dec. 9, 1936
F. A. Billstone	Assistant Treasurer	January 14, 1915, to May 24, 1934
	Treasurer and Director	May 24, 1934 to August 1, 1946 (Retired)
F. B. Firmin	Cashier, Rocky Mountain Division	December 1919 to 1927
	Assistant Treasurer	1927-1935 (Died in 1942)
Slim Hungerford	Tool Pusher	1920-1924
John McFadyen	Division Manager, Rocky Mountain Division	1912 to May 31, 1941 (Retired) (Died April 26, 1943)

Dated this 28th day of October, 1949.

/s/ E. J. McCABE,
Attorney for Plaintiffs.

/s/ W. H. EVERETT,

/s/ LOUIS P. DONOVAN,
Attorneys for Defendant.

[Endorsed]: Filed November 7, 1949. [81]

[Title of District Court and Cause.]

STIPULATION OF FACTS ADMITTED

It Is Hereby Stipulated and Agreed by and between the Plaintiffs and Defendant above named, in the above-entitled action, by and through the undersigned, their attorneys of record, that for all purposes in or connected with the above-entitled action, the following facts alleged in the specified paragraphs of the answer of Defendant, heretofore filed in said action, are admitted by the Plaintiffs as being true and correct, to wit:

1. "That the Assignment therein referred to is not dated, but is acknowledged as of January 1, 1923, and that Inland Empire Oil and Gas Syndicate purchased its interest 'as subject to the interest of The Ohio Oil Company,' and that said Assignment specifically refers to the Operating Agreement attached to plaintiffs' Complaint" as alleged in Paragraph IV, page 2, of Answer.

2. "That in the Assignment therein referred to dated August 18, 1923, Potlatch Oil and Refining Company 'agrees to keep and perform the terms and conditions of all contracts and agreements of every kind and description by this instrument or otherwise this day transferred to' Potlatch Oil and Refining Company" as alleged in Paragraph V, page 2, of Answer.

3. "For the purpose of adjusting and setting said protests and reaching an agreement thereon, a conference was had [83] between representatives of

plaintiffs herein and representatives of defendant herein at Shelby, Montana, on or about August 7, 1925, and as a result of said conference, it was agreed between plaintiffs herein and the defendant herein that Messrs. Freeman, Thelen and Frary, attorneys at law at Great Falls, Montana, and attorneys for plaintiffs herein, would reduce to writing and send to defendant herein a statement of the items constituting the difference of opinion between plaintiffs and the defendant in the interpretation of said Operating Agreement and plaintiffs' objections to accounts theretofore rendered by the defendant in connection with its operations under the said Operating Agreement, and pursuant thereto the said Messrs. Freeman, Thelen and Frary, attorneys and agents for the plaintiffs herein, did reduce to writing and send to the defendant, on or about the 8th day of August, 1925, a written statement of the items in dispute, and thereafter on September 12, 1925, the defendant, through its Cashier, F. B. Firmin, replied to said Messrs. Freeman, Thelen & Frary" and "A full true and correct copy of said written statement from Messrs. Freeman, Thelen & Frary addressed to defendant under date August 8, 1925, is hereto attached and marked Exhibit 'A' hereof, and a full, true and correct copy of defendant's reply thereto under date September 12, 1925, is hereto attached and marked Exhibit 'B' hereof." (See paragraph IX, page 3, of Answer.)

4. That during the entire period of time between August 7, 1925, and February 28, 1943, written statements were rendered monthly by defendant to the

plaintiffs showing the costs and expenses as claimed by defendant in the developing and operating of the lands and leases under said Operating Agreement and for those months wherein said statements showed a credit balance remittances were made to the plaintiffs herein of the amounts shown as credits to plaintiffs on said statements, respectively, and that said statements were received and said remittances were accepted by the plaintiffs and [84] said remittances are still retained by plaintiffs, respectively. (See Paragraph IX, page 4, of Answer.)

5. "That the plaintiffs herein had notice of all the accounts of the defendant set forth in the complaint" and "that F. E. Hurley and A. M. Sellery died prior to the commencement of this action, said F. E. Hurley, defendant's Vice President, having died at Findlay, Ohio, on or about the 27th day of July, 1928, and the said A. M. Sellery having died at El Paso, Texas, on or about the 14th day of February, 1927." (See "First Affirmative Defense," page 5, of Answer.)

6. "That on or about July 5, 1922, the defendant, The Ohio Oil Company, commenced the drilling of a well upon the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 1, Township 35 North, Range 2 West (the Israel Sindon Oil and Gas Lease), known as the I. Sindon No. 1 well, and completed the same to the formation known as the Sunburst sand, on or about the 18th day of September, 1922, to such depth as was deemed an adequate test of the oil and gas content of the first commercial oil sand, of said lease, and defendant obtained

therein a commercial gas well; and that the defendant, The Ohio Oil Company, commenced the drilling of a well upon the Irving H. Baker Oil and Gas Lease, known as Irving Baker No. 1 well, located on the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4, Township 35 North, Range 2 West, and defendant completed same to the formation known as the Ellis sand as a commercial oil well on or about the 27th day of January, 1923, and that at all times since the completion of said Irving Baker No. 1 well, the said Irving H. Baker lease has been developed and produced by The Ohio Oil Company and has produced oil in commercial quantities." (See Paragraph I, page 6, of Answer.)

7. That the defendant ever since the completion of the I. Sindon No. 1 well above mentioned and the Irving Baker No. 1 well above mentioned, has rendered to the plaintiffs herein monthly statements showing the cost and expenses as claimed by the [85] defendant of developing and operating said lands and leases and defendant has remitted to plaintiffs the amount of the credit shown on said monthly statements wherein said statements showed a credit balance. See paragraph III, pages 6 and 7, of Answer.)

8. That payments made by the Ohio Oil Company drawn to the order of plaintiffs, respectively, were transmitted to and received by plaintiffs and the statements and the checks were accepted and received by plaintiffs and said checks were presented for payment by plaintiffs and the amounts thereof were received by plaintiffs and plaintiffs, respec-

tively, have kept and retained the proceeds of said checks. (See paragraph IV, pages 7 and 8, of Answer.)

9. A correct copy of the monthly statement rendered by defendant to the plaintiff Potlatch Oil and Refining Company for the month of June, 1927, is attached to the defendant's answer marked Exhibit "C" thereof and a similar statement was made and rendered for the same month by defendant to Inland Empire Oil & Gas Syndicate. (See paragraph V, pages 8 and 9, of Answer.)

10. That the total amount of payments remitted to plaintiffs by the defendant from the date of the completion of the first commercial oil or gas well and the 31st day of January, 1943, amounted to approximately \$250,000. (See paragraph V, page 9, of Answer.)

Dated this 27th day of August, 1949.

E. J. McCABE,

Attorney for Plaintiffs.

LOUIS P. DONOVAN,

W. H. EVERETT,

Attorneys for Defendant.

[Endorsed]: Filed August 29, 1949. [86]

[Title of District Court and Cause.]

INTERROGATORIES TO ADVERSE PARTY

The defendant requests that the plaintiff, Potlatch Oil and Refining Company, by an officer or officers thereof, competent to testify in its behalf, answer under oath in accordance with Rule 33 of the Federal Rules of Civil Procedure, the following Interrogatories:

1. Please state whether The Ohio Oil Company has furnished you with any statements of account under the Operating Agreement of June 15, 1922, attached to your Complaint herein.

2. When did The Ohio Oil Company furnish you the first such statement of account?

3. When did The Ohio Oil Company furnish you the last such statement of account?

4. Did The Ohio Oil Company furnish you a statement each and every month from and after the date of the first statement received by you? [88]

5. Do any of such statements show credit balances?

6. If you have answered "Yes" to Interrogatory 5, then please state what and all months credit balances are shown, listing the respective amounts thereof by date.

7. If you have answered Interrogatory 6 and have listed credit balances, then state whether checks of The Ohio Oil Company, for the respective credit

balances, were currently received by you with each such statement?

8. If you have answered Interrogatory 7 "Yes," then state whether you have received the amounts respectively represented by said checks so received.

9. If you have answered that you have received checks from The Ohio Oil Company, then state the approximate date each check was received by you and the amount thereof.

10. If you have answered that you have received monthly statements from The Ohio Oil Company, then properly identify and attach each and all and every part of such statements so received to your answer, and state that you have done so.

Dated this 28th day of April, A.D. 1948.

W. H. EVERETT,

Attorney for defendant, The Ohio Oil Company.

LOUIS P. DONOVAN,

Attorney for Defendant, The Ohio Oil Company.

[Endorsed]: Filed May 1, 1948. [89]

[Title of District Court and Cause.]

PLAINTIFF'S OBJECTIONS TO
DEFENDANT'S INTERROGATORIES

Now Comes plaintiff Potlatch Oil and Refining Company and objects to Defendant's interrogatory number 10 of the interrogatories heretofore served upon said plaintiff, for the following reasons:

I.

That said interrogatory number 10 of said defendant is not for the discovery of facts and documents material to the support of defendant's or plaintiffs' cause within the meaning of Rule 33 of Federal Rules of Civil Procedure, in that said rule does not provide for the production of documents and writings. Rule 34 of Federal Rules of Civil Procedure provides for the production and inspection and copying or photographing of any designated document, paper, books, accounts, letters, photographs, objects, or tangible things not privileged, which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by Rule 26(b) and which are in the possession, custody, or control of a party to the action.

Said plaintiff hereby consents to the inspection of the monthly statements referred to in said interrogatory number 10 and the copying or photographing by said defendant of any one or more or all of said monthly statements. Said statements are now in the custody of the attorney for said plaintiff, in his office 400-402 Montana Power [91] Building

(also known as the Electric Building) in the City of Great Falls, Cascade County, Montana.

Wherefore said plaintiff prays that the foregoing objection to said interrogatory number 10 of defendant be sustained and that plaintiff be relieved from compliance with said interrogatory.

Dated this 4th day of May, 1948.

/s/ E. J. McCABE,
Attorney for Plaintiff Potlatch Oil and Refining
Company.

[Endorsed]: Filed May 4, 1948. [92]

[Title of District Court and Cause.]

NOTICE OF FILING OF PLAINTIFF'S OB-
JECTIONS TO DEFENDANT'S INTER-
ROGATORIES

To the above-named Defendant to Messrs. W. H. Everett and Louis P. Donovan, attorneys for said defendant:

Please take notice that plaintiff will today file objections to defendant's interrogatories, heretofore served and filed in the above-entitled action, a copy of which is attached, and will bring on said objections for hearing thereof by the court on the 14th

day of May, 1948, at 10 o'clock a.m., or as soon thereafter as counsel can be heard.

Dated this 4th day of May, 1948.

E. J. McCABE,
Attorney for Plaintiff, Potlatch Oil and Refining
Company.

[Endorsed]: Filed May 4, 1948. [93]

[Title of District Court and Cause.]

AFFIDAVIT OF MAILING

State of Montana,
County of Cascade—ss.

E. J. McCabe, being first duly sworn, deposes and says:

That he is the attorney of record for the plaintiffs named in the above-entitled action, and resides and maintains his office at Great Falls, Montana;

That Mr. Louis P. Donovan is one of the attorneys for the defendant named in the above-entitled action and resides and maintains his office at Shelby, Montana; and that Mr. W. H. Everett is the other attorney for the defendant in the above action and resides and maintains his office in Casper, Wyoming; his office address being Ohio Oil Company Building, Casper, Wyoming;

That on the 4th day of May, 1948, affiant enclosed a true and correct copy of the annexed notice of filing plaintiff's objections to defendant's inter-

rogatories, together with a copy of said objections, in a securely sealed envelope addressed to Mr. Louis P. Donovan, Attorney at Law, Shelby, Montana, and deposited said envelope, with postage thereon fully prepaid, in the United States Post Office at Great Falls, Montana, for transmission and delivery to said attorney in regular course of mail.

That on the 4th day of May, 1948, affiant enclosed a true [94] and correct copy of the annexed notice of filing plaintiff's objections to defendant's interrogatories, together with a copy of said objections, in a securely sealed envelope addressed to Mr. W. H. Everett, Attorney at Law, Ohio Oil Company Building, Casper, Wyoming, and deposited said envelope, with postage thereon fully prepaid, in the United States Post Office at Great Falls, Montana, for transmission and delivery to said attorney in regular course of mail.

That there is regular and daily communication by United States mail between Great Falls, Montana, and Shelby, Montana, and between Great Falls, Montana, and Casper, Wyoming.

E. J. McCABE.

Subscribed and sworn to before me this 4th day of May, 1948.

[Seal] F. R. DECKER,
Notary Public for the State of Montana, Residing
at Great Falls, Montana.

My commission expires Sept. 13, 1950.

[Title of District Court and Cause.]

ANSWERS OF PLAINTIFF POTLATCH OIL
AND REFINING COMPANY TO INTER-
ROGATORIES

Answering the interrogatories propounded by the Defendant, The Ohio Oil Company, the Potlatch Oil and Refining Company makes answer and states as follows:

Defendant's Interrogatory Number 1.

Answer: Yes.

Défendant's Interrogatory Number 2.

Answer: About October 10, 1923.

Defendant's Interrogatory Number 3.

Answer: About February 20, 1943.

Defendant's Interrogatory Number 4.

Answer: Yes.

Defendant's Interrogatory Number 5.

Answer: Yes.

Defendant's Interrogatory Number 6.

Answer:

May 31, 1924.....	\$ 2,721.29
June 30, 1924.....	4,043.13
July 31, 1924.....	2,545.83
August 30, 1924.....	1,526.04
September 30, 1924.....	3,569.29
October 31, 1924.....	2,556.61
November 29, 1924.....	974.48
December 31, 1924.....	1,597.08

January 31, 1925.....	\$ 1,450.48
February 28, 1925.....	2,182.96
March 31, 1925.....	3,290.59
April 30, 1925.....	1,478.55
May 31, 1925.....	2,197.19
June 30, 1925.....	530.40
July 31, 1925.....	5,300.62
August 31, 1925.....	1,261.07
September 30, 1925.....	1,430.45
October 31, 1925.....	No Credit Balance
Shown on Statement	
November 30, 1925.....	2,121.03
December 31, 1925.....	1,083.43
January 31, 1926.....	1,871.65
February 27, 1926.....	1,217.52
March 31, 1926.....	2,659.57
April 30, 1926.....	1,761.26
May 31, 1926.....	2,181.02
June 30, 1926.....	2,161.79
July 31, 1926.....	736.73
August 31, 1926.....	361.58
September 30, 1926.....	2,363.00
October 31, 1926.....	1,989.60
November 30, 1926.....	2,388.95
December 31, 1926.....	No Credit Balance
Shown on Statement	
January 31, 1927.....	1,777.97
February 28, 1927.....	2,339.78
March 31, 1927.....	2,719.44
April 30, 1927.....	1,947.25
May 31, 1927.....	2,602.92
June 30, 1927.....	2,496.25

July 30, 1927.....	\$ 3,158.74
August 31, 1927.....	No Credit Balance
	Shown on Statement
September 30, 1927.....	1,147.93
October 31, 1927.....	366.43
November 30, 1927.....	1,350.10
December 31, 1927.....	1,754.74
January 31, 1928.....	No Credit Balance
	Shown on Statement
February 29, 1928.....	1,323.10
March 31, 1928.....	799.86
April 30, 1928.....	1,062.04
May 31, 1928.....	594.51
June 30, 1928.....	No Credit Balance
	Shown on Statement
July 31, 1928.....	1,217.40
August 31, 1928.....	2,162.06
September 29, 1928.....	2,109.89
October 31, 1928.....	2,220.57
November 30, 1928.....	1,240.52
December 31, 1928.....	2,036.68
January 31, 1929.....	1,831.29
February 28, 1929.....	2,120.68
March 30, 1929.....	1,818.61
April 30, 1929.....	2,126.97
May 31, 1929.....	1,946.37
June 29, 1929.....	1,671.05
July 31, 1929.....	1,904.75
August 31, 1929.....	1,937.24
September 30, 1929.....	2,500.58
October 31, 1929.....	984.93
November 30, 1929.....	No Credit Balance
	Shown on Statement

December 31, 1929.....	\$ 1,556.47
January 31, 1930.....	1,763.90
February 28, 1930.....	1,961.31
March 31, 1930.....	1,859.74
April 30, 1930.....	2,063.33
May 31, 1930.....	2,090.54
June 30, 1930.....	1,681.59
July 31, 1930.....	2,059.40
August 30, 1930.....	2,053.48
September 30, 1930.....	940.27
October 31, 1930.....	837.00
November 29, 1930.....	166.34
December 31, 1930.....	777.02
January 31, 1931.....	478.88
February 28, 1931.....	596.13
March 31, 1931.....	455.88
April 30, 1931.....	647.05
May 29, 1931.....	725.25
June 30, 1931.....	471.12
July 31, 1931.....	504.49
August 31, 1931.....	835.56
September 30, 1931.....	955.39
October 31, 1931.....	665.25
November 30, 1931.....	83.38
December 31, 1931.....	921.62
January 30, 1932.....	1,112.68
February 29, 1932.....	1,060.92
March 31, 1932.....	783.35
April 30, 1932.....	1,120.47
May 31, 1932.....	1,366.41
June 30, 1932.....	1,168.18
July 30, 1932.....	1,178.90

August 31, 1932.....	\$ 1,275.59
September 30, 1932.....	807.36
October 31, 1932.....	868.11
November 30, 1932.....	222.74
December 31, 1932.....	630.76
January 31, 1933.....	560.10
February 28, 1933.....	466.51
March 31, 1933.....	715.30
April 29, 1933.....	666.99
May 31, 1933.....	629.53
June 30, 1933.....	737.65
July 31, 1933.....	805.94
August 31, 1933.....	108.82
September 30, 1933.....	856.00
October 31, 1933.....	1,052.52
November 29, 1933.....	978.80
December 31, 1933.....	886.36
January 31, 1934.....	1,221.42
February 28, 1934.....	1,001.41
March 31, 1934.....	609.03
April 30, 1934.....	814.73
May 31, 1934.....	1,037.51
June 30, 1934.....	1,298.17
July 31, 1934.....	422.91
August 31, 1934.....	1,271.65
September 29, 1934.....	693.36
October 31, 1934.....	558.94
November 30, 1934.....	672.40
December 31, 1934.....	397.41
January 31, 1935.....	550.92
February 28, 1935.....	319.60
March 30, 1935.....	225.86

April 30, 1935.....	\$ 318.76
May 31, 1935.....	483.70
June 30, 1935.....	569.28
July 31, 1935.....	493.88
August 31, 1935.....	252.48
September 30, 1935.....	No Credit Balance
	Shown on Statement
October 31, 1935.....	No Credit Balance
	Shown on Statement
November 31, 1935.....	No Credit Balance
	Shown on Statement
December 31, 1935.....	No Credit Balance
	Shown on Statement
January 31, 1936.....	No Credit Balance
	Shown on Statement
February 29, 1936.....	71.62
March 31, 1936.....	779.07
April 30, 1936.....	696.85
May 31, 1936.....	433.28
June 30, 1936.....	620.64
July 31, 1936.....	557.62
August 31, 1936.....	616.95
September 30, 1936.....	398.57
October 31, 1936.....	334.99
November 30, 1936.....	No Credit Balance
	Shown on Statement
December 31, 1936.....	295.12
January 31, 1937.....	505.68
February 28, 1937.....	331.10
March 31, 1937.....	707.62
April 30, 1937.....	465.94
May 31, 1937.....	570.44

June 30, 1937.....	\$ 590.35
July 31, 1937.....	274.24
August 31, 1937.....	556.77
September 30, 1937.....	493.86
October 31, 1937.....	329.12
November 30, 1937.....	No Credit Balance
Shown on Statement	
December 31, 1937.....	14.65
January 31, 1938.....	42.66
February 28, 1938.....	162.23
March 31, 1938.....	106.74
April 30, 1938.....	126.66
May 31, 1938.....	131.74
June 30, 1938.....	127.62
July 31, 1938.....	156.71
August 31, 1938.....	134.98
September 30, 1938.....	104.81
October 31, 1938.....	No Credit Balance
Shown on Statement	
November 30, 1938.....	No Credit Balance
Shown on Statement	
December 31, 1938.....	No Credit Balance
Shown on Statement	
January 31, 1939.....	No Credit Balance
Shown on Statement	
February 28, 1939.....	No Credit Balance
Shown on Statement	
March 31, 1939.....	77.52
April 30, 1939.....	162.38
May 31, 1939.....	232.23
June 30, 1939.....	224.15
July 31, 1939.....	342.24

August 31, 1939.....	\$ 210.83
September 30, 1939.....	156.61
October 31, 1939.....	238.99
November 30, 1939.....	51.58
December 31, 1939.....	198.79
January 31, 1940.....	208.70
February 29, 1940.....	205.24
March 31, 1940.....	103.06
April 30, 1940.....	216.26
May 31, 1940.....	551.40
June 30, 1940.....	No Credit Balance Shown on Statement
July 31, 1940.....	No Credit Balance Shown on Statement
August 31, 1940.....	No Credit Balance Shown on Statement
September 30, 1940.....	No Credit Balance Shown on Statement
October 31, 1940.....	90.28
November 30, 1940.....	88.04
December 31, 1940.....	251.89
January 31, 1941.....	309.17
February 28, 1941.....	322.37
March 31, 1941.....	114.94
April 30, 1941.....	175.76
May 31, 1941.....	169.03
June 30, 1941.....	254.98
July 31, 1941.....	139.29
August 30, 1941.....	255.91
September 30, 1941.....	321.82
October 30, 1941.....	209.60
November 30, 1941.....	48.89

December 31, 1941.....	\$ 286.36
January 31, 1942.....	267.03
February 28, 1942.....	293.08
March 31, 1942.....	361.09
April 30, 1942.....	238.73
May 31, 1942.....	156.71
June 30, 1942.....	483.44
July 31, 1942.....	488.90
August 31, 1942.....	530.52
September 30, 1942.....	426.15
October 31, 1942.....	58.18
November 30, 1942.....	179.19
December 31, 1942.....	262.11
January 31, 1943.....	331.01

The above noted monthly credit balances sometimes included amounts for gas from the Israel Sinton Oil and Gas Lease.

Defendant's Interrogatory Number 7.

Answer: Yes, except that in the months hereinafter specified, amounts less than the credit balances shown were paid, as hereinafter specified in Plaintiff's answer to Defendant's Interrogatory Number 9.

Defendant's Interrogatory Number 8.

Answer: Yes, the amounts shown on the checks were received.

Defendant's Interrogatory Number 9.

Answer: Checks were received at dates varying approximately from twenty to thirty days following the dates of the respective statements,

in the amounts of the respective stated credit balances, with the following exceptions, to wit:

(a) May 31, 1924, credit balance shown on statement was \$2,721.29, amount of check received \$2,221.29;

(b) June 30, 1924, credit balance shown on statement was \$4,043.13, amount of check received \$3,543.13;

(c) July 31, 1924, credit balance shown on statement was \$2,545.83, amount of check received \$2,045.83.

It is impossible to give the exact dates shown on the checks received as same were cashed by Plaintiff and such checks were returned to the Defendant, who must have same among its files and records.

Defendant's Interrogatory Number 10.

Answer: Objections to Defendant's Interrogatory Number 10 have been filed and served and notice of time of intended presentation of such objections to the Court has been heretofore given to Defendant.

Dated this 22nd day of May, A.D. 1948.

POTLATCH OIL AND
REFINING COMPANY,

By JEAN P. GERLOUGH,
Manager and Secretary. [105]

State of Montana,
County of Cascade—ss.

Jean P. Gerlough, being first duly sworn, deposes and says:

That he is the manager and secretary of the Potlatch Oil and Refining Company, a corporation, one of the above-named Plaintiffs, and that he has been connected with said corporation in various official capacities of Director and Secretary-Treasurer from time to time since the organization of said corporation, and has personal knowledge of most of the matters inquired about and above answered.

That all of the above answers subscribed by him are true to the best of his knowledge, information, and belief; that as to all matters therein not within his personal knowledge he has made diligent inquiry and answered upon information that he verily believes to be true.

JEAN P. GERLOUGH.

Subscribed and sworn to before me this 22nd day of May, 1948.

[Seal]

E. McCABE.

Notary Public for the State of
Montana.

My commission expires July 25, 1948.

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 24, 1948. [106]

[Title of District Court and Cause.]

ADDITIONAL FACTS ALLEGED IN THE
ANSWER OF THE DEFENDANT AND
ADMITTED BY THE PLAINTIFFS FOR
TRIAL PURPOSES

Supplementing the interrogatories submitted and answered by the respective parties and filed in the above-entitled action, and supplementing stipulations of fact by the above-named parties and filed in said action, the following facts, alleged in the answer of the above-named defendant in said action, are admitted by the plaintiffs without the defendant being required to prove such alleged facts in the trial of the above action. References are to paragraph and page where the alleged facts appear in defendant's Answer.

1. That the assignment referred to in Paragraph VIII of the plaintiff's Complaint is not dated, but is acknowledged as of January 1, 1923, and that Inland Empire Oil and Gas Syndicate purchased its interest "as subject to the interest of the Ohio Oil Company" and that said assignments specifically refer to the Operating Agreement attached to plaintiff's Complaint. (Paragraph IV, page 2.)

2. That in the assignment dated August 18, 1923, and referred to in Paragraph IX of the Complaint, Potlatch Oil and Refining Company "agrees to keep and perform the terms and conditions of all contracts and agreements of every kind and [109] description by this instrument or otherwise this

day transferred to'' Potlatch Oil and Refining Company. (Paragraph V, page 2.)

3. Prior to August 1, 1925, the plaintiffs herein made certain protests and objections to certain of the charges contained in monthly statements rendered by defendant herein to plaintiffs showing its expenses and other results of its operation under the terms of said Operating Agreement and for the purpose of adjusting and settling said protests and reaching an agreement thereon, a conference was had between representatives of plaintiffs herein and representatives of the defendant herein at Shelby, Montana, on or about August 7, 1925, and as a result of said conference, it was agreed between plaintiffs herein and the defendant herein that Messrs. Freeman, Thelen and Frary, attorneys at law at Great Falls, Montana, and attorneys for plaintiffs herein, would reduce to writing and send to defendant herein a statement of the items constituting the difference of opinion between plaintiffs and the defendant in the interpretation of said Operating Agreement and plaintiffs' objections to accounts theretofore rendered by the defendant in connection with its operations under the said Operating Agreement, and pursuant thereto the said Messrs. Freeman, Thelen and Frary, attorneys and agents for the plaintiffs herein, did reduce to writing and send to the defendant, on or about the 8th day of August, 1925, a written statement of the items in dispute, and thereafter on September 12, 1925, the defendant, through its Cashier, F. B. Firmin, replied to said Messrs. Freeman, Thelen &

Frery that a full, true, and correct copy of said written statement from Messrs. Freeman, Thelen & Frery addressed to defendant under date of August 8, 1925, is marked Exhibit "A" and is attached to said answer, and a full, true, and correct copy of defendant's [110] reply thereto under date of September 12, 1925, is marked Exhibit "B" and attached to said answer; and that during the entire period of time between the 7th day of August, 1925, and the 8th day of July and the 15th day of February, 1943, written statements were rendered monthly by defendant to plaintiffs showing the claimed actual cost and expense of defendant in developing and operating the lands and leases described in the Operating Agreement between Troy-Sweet Grass Oil Syndicate and the defendant, dated June 15, 1922, and for those months wherein said statements showed a credit balance, remittance of the amount of such credit balance was made to plaintiffs, respectively, and that said remittances are still retained by plaintiffs and each of them. (Paragraph IX, pages 3 and 4.)

4. That plaintiffs had notice of all of the facts and also the accounts of the defendant as set forth in the Complaint and refrained from commencing this action until March 18, 1947, and that defendant's representatives, F. E. Hurley and A. M. Sellery, who negotiated the Operating Agreement and assignment of leases, copies of which are attached to plaintiffs' Complaint herein and marked Exhibits "A" and "B," died prior to the commencement of this action; the said F. E. Hurley,

defendant's vice-president, died at Findlay, Ohio, on or about July 27, 1928, and A. M. Sellery died at El Paso, Texas, on or about the 14th day of February, 1927, but that plaintiffs did not have knowledge of the deaths of said persons until on or about the year 1947. ("First Affirmative Defense," page 5.)

5. That defendant on or about July 5, 1922, commenced drilling of a well upon the Israel Sindon oil and gas lease (SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 1, Township 35 North, Range 2 West) known as the I. Sindon No. 1 well and completed same to the Sunburst sand on or about September 18, 1922, in a diligent [111] and workmanlike manner to such depth as was deemed an adequate test of the oil and gas content of the first commercial oil sand, in compliance with the terms and conditions of aforesaid oil and gas leases and that defendants obtained therein a commercial gas well; and that on or about the 15th day of October, 1922, the defendant commenced the actual drilling of a well upon the Irving H. Baker oil and gas lease, known as Irving Baker No. 1 Well located on the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4, Township 35 North, Range 2 West, and completed same to the formation known as the Ellis sand as a commercial oil well on or about the 27th day of January, 1923, and at all times since the completion of said well to, and including January 31, 1943, the Irving H. Baker lease has been developed and produced by the Ohio Oil Company and has produced oil in commercial quantities, but that the

work of acquiring and moving of necessary equipment and materials to the land embraced in said Irving H. Baker lease to drill same was commenced on or about June 17, 1922, and extended thereafter at various times to the date of commencement of actual drilling of the aforesaid well upon said lease on October 15, 1922. (Paragraph I, page 6.)

6. That ever since the completion of the I. Sindon No. 1 well, above mentioned, and the Irving Baker No. 1 well, above mentioned, and from the dates upon which the plaintiffs, respectively, acquired their respective interests in and under the aforesaid Operating Agreement, the defendants rendered monthly statements to plaintiffs showing the claimed actual costs and claimed expenses of defendants of developing and operating said lands and leases, and that defendant has remitted to plaintiffs for those months wherein said statements showed a credit balance alleged in said monthly statements, respectively, and that plaintiffs at all said times had had the right of access to the buildings, lands, and property mentioned in said Operating Agreement for the purpose of examining [112] the operations thereunder and the production therefrom and the further right at all reasonable times during the business hours to examine books and records of the defendant insofar as they pertained to the operations conducted under said Operating Agreement, except that such books and records of defendant were not kept within the state of Montana and were kept in part at Casper, Wyoming,

and in part at Findlay, Ohio. (Paragraph III, page 7.)

7. That during the time subsequent to the completion of the first commercial oil or gas well upon the premises described in said Operating Agreement, and from the time when the plaintiffs respectively acquired their interest and rights in and under said Operating Agreement, and during and up to the 31st day of January, 1943, the defendant made monthly statements in writing to the plaintiffs herein purporting upon the face of each of said monthly statements to state the total amount of monthly oil production from the lands described in said Operating Agreement and at the purported price at which the same was sold or accounted for and the claimed actual cost and claimed expense of defendant of developing and operating said lands and leases, and for those months wherein the statements showed a credit balance, remittances of the amounts of the stated credit balance were made by defendant to plaintiffs by check of the defendant, drawn to the order of plaintiffs herein, respectively, and were subsequently transmitted and received by the plaintiffs, respectively, and that the said checks were presented for payment by the plaintiffs and the various amounts thereof were received by the plaintiffs and the plaintiffs have ever since kept and retained the proceeds of said checks and that the amounts of aforesaid credit balances and the amounts of aforesaid checks purported to be plaintiffs' respective share [113] of the production from the leased lands less the purported deductions made

by the defendant as plaintiffs' proportionate share of purported costs, expenses, and charges. (Paragraph IV, pages 7 and 8.)

8. That a correct copy of the monthly statement rendered by defendant herein to the plaintiff, Potlatch Oil and Refining Company, for the month of June, 1927, and purporting to show the cost, expense, and charges of the developing and operating of certain properties described in the Operating Agreement and the purported receipt of oil and gas produced therefrom is marked Exhibit "C" to the said answer of the defendant herein and similar statement was made and rendered for the same month by the defendant to Inland Empire Oil and Gas Syndicate, and that similar monthly statements in substantially the same form as to subject matter and differing from Exhibit "C" hereto attached only as to the month in question and the amounts of oil or gas produced and sold and amount of payments received from same and costs and expenses of development and operation, were rendered and delivered to plaintiffs during each of the months between the dates upon which the plaintiffs acquired their respective interests in the aforesaid Operating Agreement and the leases described therein to, and including, the 31st day of January, 1943, and such statements upon their face purported to show the claimed actual costs, charges, and expenses of defendant in operating said lands and leases and purported to show the claimed proceeds of the defendant from the sale of oil or gas pro-

duced or sold from said premises and the shares claimed by defendant as purported to be the share of the respective plaintiffs therein and for those months where said statements showed a credit balance, each of said statements was accompanied by a check, purporting [114] to remit to each of the plaintiffs herein the amount of such proceeds payable to each plaintiff at the date of such monthly statements, and the said monthly payments were accepted and retained by plaintiffs herein and that the total amount of such payments remitted to plaintiffs and to the predecessors in interest of plaintiffs, respectively, by the defendant between the date of the completion of the first commercial oil or gas well under the terms of said Operating Agreement and the 31st day of January, 1943, equalled or exceeded the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00). (Paragraph V, pages 8 and 9.)

Dated this 30th day of November, 1949.

/s/ E. J. McCABE,
Attorney for Plaintiffs.

[Endorsed]: Filed December 14, 1949. [115]

[Title of District Court and Cause.]

ORDER

The Court, in furtherance of convenience of the parties and the Court, will order a trial of the claims of the respective parties, hereinafter specified; and the Court, being fully advised in the premises, and It Appearing to the Court that the convenience of the Court and parties to this action would be furthered by the granting of said request and ordering a trial upon the issues and claims hereinafter specified;

Now, Therefore, pursuant to the provisions of Rule 42 (b) of the Rules of Civil Procedure, It Is Ordered that the following issues be tried prior to any accounting that may be taken in this case, if an accounting is found necessary. Said issues and claims are as follows:

(a) That the Court determine, as an issue, whether oral evidence of the character offered by the Deposition of T. P. Jones on file herein [117] or any similar oral testimony from other witnesses to such effect is admissible for the purpose of (a) modifying or explaining the terms of the Operating Agreement, a copy of which is attached to Plaintiffs' Complaint herein and marked Exhibit "A" thereof, or (b) interpreting the same and if the Court finds that such testimony is admissible, then that the Court further find what the actual agreement dated June 15, 1922, between Troy-Sweet Grass Oil Syndicate and The Ohio Oil Company was in regard to such matters, and that the Court

adjudge and declare the true and actual meaning of the said Operating Agreement made and entered into between Troy-Sweet Grass Oil Syndicate, as party of the first part, and The Ohio Oil Company, as party of the second part, dated June 15, 1922, a copy of which is attached to Plaintiff's Complaint herein and marked Exhibit "A" thereof; and what costs and expenses of developing and operating said lands for oil and gas purposes, as incurred by The Ohio Oil Company, could properly be charged in part (to the extent of 45% thereof) to Troy-Sweet Grass Oil Syndicate, and its successors in interest;

(b) That the Court determine, as an issue herein, the merits of the defendant's First Affirmative Defense set up in Defendant's [118] Answer herein, pleading the defense of laches as a bar to the cause of action set forth in Plaintiffs' Complaint;

(c) That the Court determine, as an issue herein, the merits of the Defendant's Second Affirmative Defense and defendant's Third Affirmative Defense set forth in its Answer herein, wherein defendant pleads the five-year statute of limitations in its Second Affirmative Defense and the eight-year statute of limitations in its Third Affirmative Defense;

(d) That the Court determine, as an issue herein, the merits of defendant's Fourth Affirmative Defense set forth in its Answer herein, wherein defendant pleads in effect that there was an account stated between the plaintiffs herein and the defend-

ant herein by their respective monthly statements;
and

(e) That a finding and decision be made by the Court on the foregoing issues before any trial is ordered upon the question of an accounting herein.

Done in Open Court this 22nd day of December,
A.D. 1949.

/s/ CHARLES N. PRAY,
Judge.

[Endorsed]: Filed and entered December 22,
1949. [119]

[Title of District Court and Cause.]

MOTION

Comes Now the defendant, The Ohio Oil Company, a corporation, and at the close of all of the testimony in the above-entitled case upon the trial of issues preliminary to any accounting in the above-entitled action, respectfully moves the Court that the Court make its Findings of Fact and Conclusions of Law and enter a judgment in the above-entitled action in favor of the defendant and against the plaintiffs upon the following grounds and for the following reasons:

1. That the oral evidence offered by plaintiffs herein by the Deposition of T. P. Jones, and other evidence of similar character to the effect that it was orally agreed by the parties to the Operating Agreement between Troy-Sweet Grass Oil Syndi-

cate, as party of the first part, and The Ohio Oil Company, as party of the second part, dated June 15, 1922, at the time of or before the execution of said written agreement, that no part of the expenses for development or operation of the leases described in said agreement, would be charged to Troy-Sweet Grass Oil Syndicate, or its successors, where same were incurred off of the lease or for any overhead or supervision of operations in the development and production of the leases or even for pumping wells situated thereon, and that no cost of operations of wells after the well was drilled and put on production, was to be chargeable to Troy-Sweet Grass Oil Syndicate, or its successors, and that all oral testimony to the effect that it was the intention of the parties [121] to the Operating Agreement that The Ohio Oil Company should drill the wells and put them in production, and that Troy Sweet Grass Oil Syndicate would pay its 45% of such expenses, and from there on should pay nothing and be chargeable with nothing for operation of said leases, and all similar oral testimony from other witnesses to such effect is contrary to and inconsistent with the plain, certain and unambiguous terms of the written agreement, and that said proposed oral testimony is inadmissible for the purpose of modifying, varying or pretending to interpret said written contract, upon the ground and for the reason that the said written agreement between Troy-Sweet Grass Oil Syndicate, as first party, and The Ohio Oil Company, as second party, dated June 15, 1922, is not uncertain or ambiguous, and does not require

any interpretation, and said written agreement expressly declares that it (The Ohio Oil Company) will "pay all costs and expenses of developing and operating said lands for oil and gas purposes," as therein provided, and shall charge the said party of the first part (Troy-Sweet Grass Oil Syndicate) 45% thereof; and the above-mentioned oral testimony of T. P. Jones and other witnesses offering similar testimony is not an interpretation of any uncertain or ambiguous terms of the written contract, but on the contrary, is a direct contradiction of the plain and certain terms of said written contract, and upon that ground and for that reason the said oral testimony is inadmissible as an attempt to vary the terms of a written contract, and no force or effect should be given thereto.

2. That even if the Court should find that the oral testimony of T. P. Jones above mentioned or other similar oral testimony was admissible for the purpose of interpreting or modifying the written contract, or on any other ground, the weight of the testimony clearly shows that the written contract is a true and correct expression of the intention of the parties thereto, as indicated by the following evidence herein:

(a) The testimony of K. G. Luke, Secretary and a co-trustee of Troy-Sweet Grass Oil Syndicate, is inconsistent with and fully contradicts the testimony of said T. P. Jones in regard to the making of the said written contract and the negotiations leading up to the making of said contract [122] between Troy-Sweet Grass Oil Syndicate, first

party, and The Ohio Oil Company, second party, dated June 15, 1922; and

(b) The said testimony of T. P. Jones is further contradicted by the testimony of A. M. Gee, the only witness now surviving, who represented The Ohio Oil Company in said negotiations; and

(c) The interpretation placed upon said agreement by the parties thereto (Troy-Sweet Grass Oil Syndicate and The Ohio Company) for more than a year after the date thereof, as shown by the fact that monthly statements were rendered during said period of time by The Ohio Oil Company, as operator, and party of the second part, to said Troy-Sweet Grass Oil Syndicate, as first party and owner of a non-operating interest in said leases, in which monthly statements charges were regularly made by The Ohio Oil Company for overhead and for other charges off the leases and for costs of operating the lease subsequent to the date when wells were drilled and placed on production, without objection made by Troy-Sweet Grass Oil Syndicate, and therefore shows that the parties to the original agreement construed the said agreement in accordance with the plain and unambiguous terms thereof and without giving any force or effect to the alleged oral negotiations testified to by T. P. Jones in his Deposition offered herein leading up to the execution of said written agreement dated June 15, 1922; and also by the further fact that other similar operating agreements were entered into by Troy-Sweet Grass Oil Syndicate and Potlatch Oil and Refining Company, as lease-owners, and The Ohio

Oil Company, as operator, on or about the 15th day of June, 1922, affecting other lands in the Kevin-Sunburst Oil Field in Toole County, Montana, in which the language in regard to charges that might be legitimately made to the non-operating party interested, were the same as the provisions contained in the contract between Troy-Sweet Grass Oil Syndicate, as first party, and The Ohio Oil Company, as second party, dated June 15, 1922, and that in the interpretation of the said Operating Agreements by the parties thereto, the Troy-Sweet Grass Oil Syndicate did not make any objection to charges made by The Ohio Oil Company for water obtained from Sunhio system or other expenses incurred off the lease, including expenses incurred by The Ohio Oil Company in the construction and maintenance of the Ohio-Swayze Camp, and that the same [123] was also true of the agreement between Potlatch Oil and Refining Company, as first party, and The Ohio Oil Company, as second party, dated June 15, 1922, affecting the Oliver Hannon lease and the Baptiste-Sindon lease covering respectively the E $\frac{1}{2}$ W $\frac{1}{2}$ and W $\frac{1}{2}$ E $\frac{1}{2}$ of Section 26, Township 36 North, Range 2 West, and the S $\frac{1}{2}$ of Section 1, Township 35 North, Range 2 West, and thus indicates that the parties to the said basic agreement between Troy-Sweet Grass Oil Syndicate and The Ohio Oil Company placed their own interpretation upon said contract and interpreted same in accordance with the contention of the defendant, The Ohio Oil Company, in this action, and contrary to the claims and contentions of the plaintiffs herein.

(3) That the evidence offered herein on the part of the plaintiffs, if same be deemed admissible for any purpose, merely tends to show that if the plaintiffs had any right of action at any time in connection with said contract between Troy Sweet Grass Oil Syndicate, as first party, and The Ohio Oil Company, as second party, dated June 15, 1922, a copy of which is attached to Plaintiffs' Complaint herein, the same was in the nature of a right to have said contract reformed and made to express an agreement and intention of parties contrary to the express terms of said contract between the parties to said contract, dated June 15, 1922, and that the plaintiffs herein are now barred by laches and also by the statute of limitations of the State of Montana from making any claim to reform said contract, and all claims under said contract based upon the oral testimony offered by plaintiffs herein for the alleged purpose of interpreting said contract, but actually for the purpose of contradicting same and varying the terms thereof, should be and the same are barred by laches in view of the undisputed fact that all of the representatives of The Ohio Oil Company participating in the negotiations and execution of said contract and the interpretation of same (except A. M. Gee) are now deceased, including Defendant's Vice-President, F. E. Hurley, and Defendant's Lease Representative, A. M. Sellery, and Defendant's Cashier, F. B. Firmin, and Defendant's General Manager, John McFayden.

4. That none of the oral testimony offered by plaintiffs or any assignor of plaintiffs, including

T. P. Jones, as to the facts of direct transactions or oral communications between the proposed witness and the deceased [124] agents (F. E. Hurley, F. B. Firmin, John McFayden and A. M. Sellery) of The Ohio Oil Company, is admissible for the reason that such parties plaintiff, or assignors of parties plaintiff, cannot be witnesses under the statute of Montana in such cases made and provided, in that should it appear to the Court that no injustice will be done by excluding such proposed testimony.

5. That the evidence shows that under the terms of the Contract herein, if any error was made by defendant, The Ohio Oil Company, in the rendition of the monthly accounts, as required by the terms of said contract dated June 15, 1922, and there was any failure to make monthly payments or to account to Troy-Sweet Grass Oil Syndicate, or its successors, for the undivided 45% of the proceeds from the sale of production from said leases at the prevailing market price at the wells for said oil and gas, after deducting all royalty oil and gas or the proceeds thereof, such failure gave rise to a cause of action at date thereof upon which an action could be immediately brought by the aggrieved party against The Ohio Oil Company, if any valid grievance existed, and that all such causes of action arising more than eight years prior to the date of commencement of the present action on the 18th day of March, 1947, are barred by the Montana statute of limitations relating to actions based upon contracts in writing.

6. That the testimony offered by plaintiffs herein relating to the alleged statements or alleged promises of John McFadyn, or other agents of the defendant, The Ohio Oil Company, is incompetent and insufficient as being the testimony of persons who are assignors of the present plaintiffs herein and also upon the further ground that said testimony in regard to the said alleged promises does not, under the Montana statute of limitations in the State of Montana or the Montana rule of laches, operate to suspend or control the statute of limitations, in that the statute of limitations in the State of Montana can be tolled or suspended only in the manner prescribed by the statute of limitations and not in any other manner, and that none of the alleged statements of John McFayden or L. J. Yealy or Virgil McCracken, or any other agent of The Ohio Oil Company, operated to suspend or toll the statute of limitations or to extend the time within which an action should [125] have been commenced by the plaintiffs without being subject to the bar of laches or the statute of limitations.

7. That the evidence herein shows without dispute that during the entire period of the operation of said leases by The Ohio Oil Company from June 15, 1922, to January 31, 1943, The Ohio Oil Company rendered to the plaintiffs herein and their predecessor in interest, Troy-Sweet Grass Oil Syndicate, monthly statements as required by the terms of said Contract dated June 15, 1922, between Troy-Sweet Grass Oil Syndicate, as first party, and The Ohio Oil Company, as second party, and that in

all cases where, under the terms of said agreement, a credit and payment was due to the said Troy-Sweet Grass Oil Syndicate, or to the plaintiffs herein as the successors in interest of Troy-Sweet Grass Oil Syndicate, a check was made in remittance of such payment to such party, and that same was transmitted by The Ohio Oil Company to such party and accepted and received by such party in payment of the amount due to such party, and that such statement rendered by the defendant and such payment and acceptance and receipt by the parties plaintiff herein, constitutes an account stated and an accord and satisfaction of all claims between the parties hereto for the period covered by said statement.

Dated this 23rd day of December, A.D. 1949.

W. H. EVERETT,

LOUIS P. DONOVAN,

Attorneys for Defendant.

[Endorsed]: Filed December 23, 1949. [126]

In the District Court of the United States, in and
for the District of Montana, Great Falls Division

Civil No. 956

POTLATCH OIL AND REFINING COMPANY,
a Corporation, and JEAN P. GERLOUGH,
STANLEY H. HODGMAN, and ROY E.
LARSON, as Trustees of That Certain Trust
Known as INLAND EMPIRE OIL AND
GAS SYNDICATE, a Common Law Trust,
Plaintiffs,

vs.

THE OHIO OIL COMPANY, a Corporation,
Defendant.

OPINION

The above-named corporations, including the trustees of the common law trust, plaintiffs and defendant, assisted by able counsel, accompanied by voluminous records and briefs, are here engaged in an effort to reform, or prevent the reformation, of a written agreement between the parties, or their predecessors in interest, for the development of oil and gas lands, in Glacier County, Montana, entered into over a quarter of a century ago; out of which the plaintiffs are said to have been paid under the terms of the agreement over \$400,000 and the defendant has received therefrom over \$500,000; the latter having undertaken the hazard of drilling the first well on the lands described in the agreement—free of all cost to the plaintiffs, or

their predecessors in interest. They were all "oil men" and engaged in leasing and developing lands for the recovery of oil and gas, and knew, or should have known and understood, the forms and terms of oil leases and contracts of that kind in general use in the field of their operations, and should therefore be distinguished from persons engaged in other pursuits, who have leased prospective oil lands for speculative purposes and who were not familiar with the details of oil leases and contracts and therefore are obliged to rely to a great extent on the interpretation placed upon such instruments by persons experienced [128] in the oil and gas industry. So that, to begin with, in judging of parties and conditions it would appear that we are not dealing with neophytes in the development of oil and gas lands.

The written agreement in question here was made and signed June 15, 1922, by and between Troy-Sweet Grass Oil Syndicate, a common law trust, hereinafter known as Troy, as part of the first part, predecessor in interest of the above-named plaintiffs, and The Ohio Oil Company, hereinafter known as Ohio, as the party of the second part, by the terms of which written agreement the first party sold and assigned to second party an undivided 55% interest in and to the leases and lands therein described, being Tracts 152, 153, 154, 155 and 156 on Map marked Ex. W. Tr. 255. Ohio took possession of the said lands in July, 1922, and drilled for oil and gas, which resulted in production of oil in commercial quantities.

On June 1, 1923, Troy assigned an undivided one-half of its remaining 45% interest in the "Baker Lease" to Inland Empire Oil and Gas Syndicate, known hereinafter as Inland. August 18th, 1923, Troy assigned all of its interests in all of the leases and lands described in said agreement, including the remaining 22½% interest in the Baker Lease, to Potlatch Oil and Refining Company, hereinafter referred to as Potlatch.

The principal bone of contention on the part of plaintiffs seems to arise over interpretation of paragraph III of the agreement which provides: "In the event that the well described in paragraph two herein above shall prove a commercial well, the party of the second part shall continue the work of developing and operating said premises in as diligent a manner as field and market conditions warrant and as is consistent with good business management. It will pay all costs and expenses of developing and operating said lands for oil and gas purposes, as herein provided, and shall charge the said party of the [129] first part forty-five (45%) per cent thereof. Second party shall market all oil and gas produced upon said land and account to the party of the first part for the undivided Forty-five (45%) per centum of the proceeds thereof at the prevailing market price of the wells for said oil and gas after deducting all royalty oil and gas or the proceeds thereof. The said party of the second part shall be reimbursed by the said party of the first part solely from the first party's proportion of

the oil and gas produced and sold from said land. Application from proceeds from sale of said oil and gas will be made to the credit of the first party's account upon the first day of the month following that in which said oil and gas is sold, but in no case shall said party of the first part be finally held or charged beyond its share or interest in the production and equipment from, in or upon said lands. The party of the second part shall be entitled to and shall charge the party of the first part eight (8) per centum interest upon all moneys so advanced for the development and operations upon said lands for the account of the interest of the first party's until the same shall have been paid out of the proceeds of the party of first part's proportion of the oil and gas produced and sold as herein provided, said interest payments to be also paid out of production.

"IV. The party of the second part hereby agrees to render the party of the first part monthly statements showing the actual cost and expenses of developing and operating said lands and leases and will remit monthly to the party of the first part all proceeds of the oil and gas sold from the interest of the first party over and above the amount necessary to reimburse the party of the second part for expenditures made by it for the account and interest of the party of the first part.

"V. The party of the first part through its duly authorized agents or representatives shall at all reasonable times have access to the buildings, lands and property hereinabove [130] for the purpose

of examining the operations thereon and the production therefrom, and at all reasonable times during business hours shall have the right to examine the books and records of the party of the second part insofar as they pertain to the operations conducted under this agreement.”

It appears that all monthly statements required by paragraph IV were furnished to Troy beginning with August, 1922, and thereafter to its assignees, Potlatch and Inland.

It appears that all payments were made according to agreement, and that wherever an error or mistake occurred a correction was made, and that all checks and vouchers were received by plaintiffs, and that all such checks were cashed; there seems to be little if any dispute in respect to book-keeping and payments by Ohio. The first complaint about overcharges seems to have come from Inland September 11th, 1923, to the effect that “overhead expenses” and other charges were improperly included in monthly statements; on September 22nd, 1923, Ohio answered by letter and rejected Inland’s claim and held that all charges were properly made according to the written agreement.

Counsel for plaintiffs wrote Ohio on July 17, 1925, objecting to charges made, demanding a correction and proposing a conference for a settlement of disputes in lieu of suit. Ohio responded July 21, 1925, in a letter to plaintiff’s attorneys that “while we feel that the charges were carefully prepared and are entirely justified, representative of the company will be glad to meet you and

discuss with you fully and frankly any items your companies are complaining of. * * *'' The meeting occurred on August 7, 1925, and as a result plaintiffs' attorneys agreed to furnish Ohio with written objections to its charges, and complied on the following day. On September 12th, 1925, Ohio replied, refusing to make any changes in its charges and gave reasons therefore. [131]

From a stipulation of facts dated October 28, 1949, it appears that F. E. Hurley, who negotiated and signed the agreement, representing the Ohio, died more than 18 years prior to the commencement of this action; that A. M. Sellery, who negotiated and witnessed the agreement on behalf of Ohio, died more than 20 years prior to this action; that F. R. Firman, who rejected plaintiffs' contentions in 1925 on behalf of Ohio, died about 5 years prior to this action, and that John McFadyen, Division Manager, Rocky Mountain Division, of Ohio, died more than 3 years prior to commencement of this action.

According to defendant "No reply of further action was heard from or taken by plaintiffs to the type of charges made under this agreement until May 20, 1936, and June 9, 1936," when plaintiffs wrote a letter to Ohio objecting to charges made on account of certain automobile and trucking expenses, holding that such charges were not within the letter or spirit of the agreement under which Ohio was operating. On July 1, 1936, Ohio replied to plaintiffs' complaints objecting to the

foregoing charges and refused to make any change in such charges.

It appears that nothing more was heard from plaintiffs nor was any action taken about complaints made of improper charges by Ohio until the spring of 1946, which is said to have been more than three years after Ohio had sold and disposed of its entire interests in the agreement to the Texas Company. At the time aforesaid, spring of 1946, counsel for plaintiffs asked Ohio for an accounting and settlement of improper charges alleged to have been made under the terms of the agreement, and which had been presented to Ohio for adjustment and settlement by plaintiffs on different occasions in 1923, 1925, and 1936, and had been refused in each instance [132] as was the proposal in the spring of 1946. The following spring this action was commenced.

Ohio offered evidence that it had other agreements like the one in suit with other persons in the Glacier County oil fields, and of the same date, June 15th, 1922, had other like agreements with Troy and Potlatch covering other leases, and that no complaints were made about them. Plaintiffs objected to any evidence of other leases by Ohio, and the court will sustain the objection, such evidence apparently serving no material purpose.

The motion by defendant to dismiss the suit was denied with the right reserved of renewal at the time of trial; one of the questions raised therein was that the suit is barred by the statutes of limitation, and this seems to present an important

issue, and especially so since hearing the evidence given at the trial.

As to the language of the agreement in controversy there seems to be no difficulty in understanding its meaning, and it should be remembered that the parties entering into this agreement were engaged in the production of oil and gas, and familiar with the terms of contracts and leases relating to such industry, and knew or should have known the meaning of the language contained in the agreement to which they affixed their signatures. The Court has stated that the language in question is plain, but that does not mean that it may not have been misused in the sense that it might enable the defendant to indulge in an unlimited expense account; having control of the purse strings of production defendant could charge to the account of plaintiffs items that had to do either proximately or remotely with "all costs and expenses of developing and operating said lands for oil and gas purposes." But defendant has insisted from the beginning that all charges have been properly made. [133]

This case bears some resemblance to the Vande Putte case, discussed by counsel in their briefs, and found in 35 Fed. Supp. 794, wherein this court said; "Under that language it would seem that nearly everything having any connection with the drilling of a well has been charged against the plaintiffs in the joint account, and no matter how much oil was produced, the plaintiffs might find themselves no better off at the finish than they were in the beginning, unless some limitation was placed somewhere on this apparently unrestrained

charging power of the defendant." There the accounting of defendant found the plaintiffs deeply in debt, and the court decided that improper charges had been made in the account. That case was decided by this court in favor of plaintiffs; was appealed and before the appeal was considered by the higher court, a settlement occurred and the appeal was dismissed. The phraseology of the Vande Putte agreement was much different from this case; in that case the plaintiffs, lessors, were repeatedly assured over a long period of time by the defendant, lessee, that they would get together and consider the charges, and that all proper adjustments would be made, but the lessee never kept its agreement to make good these assurances, and finally the plaintiffs brought suit, and the parties stipulated that defendant would submit an account of all charges made under the agreement for determination by the court; this was done and the court eliminated all charges deemed to be improper under the agreement; the defense of laches and limitation of actions was pleaded by defendant, but was denied by the court. If any laches existed in that case, the court held that both sides were equally blameable.

The testimony of Mr. Jones seems to relate to a different agreement from the one at issue in this case; as it appears to the Court no such interpretation or understanding as he has suggested could be entertained without writing a new agreement; such a modification could only have been made by another [134] agreement in writing or by

any executed verbal agreement; nor could the purported verbal statements of the deceased Ohio representative have been effective to toll the statutes of limitations unless they were submitted in writing. Sec. 93-2716 R.C.M. 1947. From all the evidence and rules that appear applicable it does not seem that this testimony is necessary to prevent an injustice being done in this case. Sec. 93-701-03; *Phelps v. U. C. Life Ins. Co.*, 105 Mont. 195; *Langston v. Currie*, 95 Mont. 57; *Wilcox v. Schissler*, 55 Mont. 246; *Armington v. Steele*, 27 Mont. 13; 93-401-13 R.C.M. 1947. This Court cannot write a new agreement for the plaintiffs 28 years after it was entered into by the parties, when such agreement was stated in plain terms and was made, and read, and signed by intelligent and experienced operators in this particular line of industry.

Having considered the arguments in favor of and in opposition to the admission of the testimony of Mr. Jones, and numerous authorities cited by counsel for the respective parties, the Court is now of the opinion that the objection thereto should be sustained and such will be the order of Court herein. Even if this testimony were admitted it could be of little probative value as affecting the bar of the statute of limitations, since a continuous and unvarying course of conduct on the part of the defendant has been established by convincing proof over a period of about 25 years during which defendant refused to make any such changes in its charges as were requested by plaintiffs or their representatives.

It appears that plaintiffs finally brought suit in 1947, after all but one of the representatives of defendant who had participated in the making of or execution of the agreement, or had any definite knowledge concerning it, had died. In the Court's opinion this is a tardy suit and the laches of plaintiffs and the statutory limitations cited by counsel would bar [135] recovery under plaintiffs' claim. From a perusal of the facts and contentions of counsel the Court is unable to agree that this undertaking constituted a joint adventure and thereby imposed obligations upon defendant as a trustee for plaintiffs.

A long discussion ensued on the part of counsel on the subject of an account stated which arose over the monthly statements and payments by defendant to plaintiffs, and many authorities have been cited by counsel in support of their respective views. Upon examination of authorities it would appear that when plaintiffs accepted the monthly statements, entered into settlements thereof and accepted payments therefor, over a period of many years, in the sum total of about \$400,000, well knowing that defendant had repeatedly refused to make any changes in its charges such as plaintiffs proposed, and that the latter was bound to know that the intention was to make the payment in full settlement, it would seem that the rules governing the interpretation of an account stated would favor the defense in this case, as appears to be indicated by the greater weight of authority. *Norum v. Ohio Oil Co., et al.*, 83 Mont. 353; *McNab-*

Bess Oil Co. v. Commonwealth Oil & Gas Co., 52 Pac. (2) 3633; Jensen v. Cloud, 107 Mont. 593; 88 Pac. (2) 36; Sawyer v. Somers Lumber Co., 86 Mont., 169, 179.

In view of the foregoing it becomes apparent that the Court is of the opinion that the defendant should prevail in this suit, accordingly findings of fact and conclusions of law, and form of judgment may be submitted; costs go to defendant. Exceptions allowed plaintiffs.

CHARLES N. PRAY,
Judge.

[Endorsed]: Filed January 22, 1951. [136]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause was tried to the Court without a jury, and the Court having considered the trial briefs presented by counsel and upon consideration of the pleadings, record and the competent evidence herein and being fully advised, found issues of law and fact in favor of Defendant and against Plaintiffs, as more fully appears in an opinion heretofore filed herein on January 22, 1951; and therein provided that findings of fact and conclusions of law may be submitted, together with form of judgment. Accordingly such findings of fact and conclusions of law have been submitted, and the Court in supplementing said opinion now makes the following findings of fact and conclusions of law:

Findings of Fact

The Court finds that:

1. The Plaintiff, Potlatch Oil and Refining Company, is a Montana corporation.

2. The Plaintiffs, Jean P. Gerlough, Stanley H. Hodgman and Roy E. Larson, are residents of Montana and are the trustees of that certain common law trust known as Inland Empire Oil and Gas Syndicate. [138]

3. The Defendant, The Ohio Oil Company, (hereinafter called "Ohio") is an Ohio corporation having its principal office and place of business in Findlay, Ohio, and is authorized to engage in business in the State of Montana.

4. On June 15, 1922, Plaintiffs' predecessor in interest, Troy-Sweet Grass Oil Syndicate, a common law trust, acting by and through T. P. Jones, who bought into and had command of it as an owner and as trustee, president and general manager, entered into a written agreement with Ohio for the development and operation of the oil and gas leases in Toole County, Montana, therein described and on the same date and concurrent therewith assigned to Ohio an undivided 55% interest in and to said leases. The pertinent portions of said agreement are set forth in the Court's opinion filed January 22, 1951, referred to above, and the Court finds that said agreement was and is plain and free from ambiguity and is clear, explicit and unequivocal in its language, terms and provisions

and that Ohio at all times has fully complied with each and all of the obligations therein imposed upon it.

5. T. P. Jones, F. E. Hurley and all of the other persons who negotiated and prepared the agreement of June 15, 1922, were engaged directly or indirectly in the production and development of oil and gas leases and lands and were experienced in that business and knew or should have known and understood the meaning of the plain language used and contained in said agreement which was entered into at arm's length.

6. On January 1, 1923, Troy-Sweet Grass Oil Syndicate, (hereinafter called "Troy") acting by and through T. P. Jones, as aforesaid, assigned an undivided one-half of its remaining 45% interest in the Baker Lease, one of the leases included in said agreement with Ohio to Plaintiff, to Inland Empire Oil and Gas Syndicate, (hereinafter called "Inland"). On August 18, 1923, Troy assigned [139] all of its interests in all of the leases and lands described in said agreement (including the remaining 22½% interest in the Baker lease) to Potlatch Oil and Refining Company (hereinafter called "Potlatch").

7. On or about July 5, 1922, Ohio entered into possession of the leases included in said agreement and commenced drilling for oil and gas thereon, resulting in production of gas in commercial quantities on September 18, 1922, and production of oil in commercial quantities on January 27, 1923. After

production was obtained monthly statements of account, as required by said agreement, setting forth all costs and expenses of development and operating said lands were made by Ohio to Troy commencing in August, 1922, and thereafter until Troy assigned to Inland and Potlatch. After Inland and Potlatch acquired their interests the monthly statements were made to them. For those months in which the income from the lands and leases exceeded all costs and expenses of developing and operating the lands, said statements were accompanied by Ohio's check under transmittal voucher which clearly indicated thereon that the remittance and check were in full settlement or in full payment of the respective items for the respective months. All the checks and vouchers were received by Troy and Plaintiffs, the checks were cashed and the money retained. At no time during the period subsequent to Ohio entering into possession and prior to the time that Troy assigned to Inland and Potlatch were any objections ever made by Troy to Ohio with reference to the accounting which included the same items as subsequent statements of account made to Inland and Potlatch. During the period between the commencement of production and January 31, 1943, the date Ohio disposed of all of its interest in said contract and leases, Ohio paid to Inland and Potlatch a sum of approximately \$400,000 over and above their respective shares of all costs and expenses of developing and [140] operating said lands for oil and gas purposes. Said payments were received

and accepted by Plaintiffs during all of said period well knowing that Ohio had repeatedly refused to make any changes in its charges such as plaintiffs proposed and Plaintiffs knew or should have known that the payments were made by Ohio in full settlement of the respective items covered in its respective monthly statements.

8. In 1923, 1925, and 1936, Plaintiffs made complaint to Ohio with reference to the charges made by Ohio for expenses of operation and development and in each instance Ohio refused to make any changes in its charges as requested by Plaintiffs and maintained a continuous and unvarying course of conduct throughout the entire period as established by convincing proof under which it flatly and unequivocally refused to make any such change. Ohio during all of said period steadfastly maintained that the charges and its accounting were in strict accordance with the terms and provisions of said agreement of June 15, 1922.

9. Mr. F. E. Hurley, who negotiated and signed the agreement of June 15, 1922, on behalf of Ohio, died more than eighteen years prior to the commencement of this suit (March 18, 1947). Mr. A. M. Sellery, who negotiated and witnessed the agreement of June 15, 1922, on behalf of Ohio, died more than twenty years prior to the commencement of this suit. Mr. F. B. Firmin died about five years prior to the commencement of this suit. Mr. John McFadyen, who was Division Manager, Rocky Mountain Division of Ohio, at the time said

contract was entered into and for approximately twenty years thereafter, died more than three years prior to the commencement of this suit. [141]

Conclusions of Law

The court declares the following conclusions of law to be pertinent and applicable to the foregoing findings of fact, to wit:

1. That the agreement of June 15, 1922, between Troy and Ohio contained the full and complete agreement and understanding of the parties thereto; is clear and explicit, does not involve an absurdity and was and is binding upon the parties, their successors and assigns. The intention of the parties must be ascertained from the agreement alone and it may not be explained, interpreted, reformed, varied, modified or amended by parol evidence or reference to matters outside of and not recited in said written agreement. T. P. Jones' testimony as to the alleged remarks by John McFadyen, deceased manager of Ohio, is not admissible for any purpose. No foundation for such testimony has been made and no injustice will be done by excluding such testimony. The validity of the agreement is not in dispute and no mistake or imperfection of the writing is put in issue, nor is the contract claimed to be illegal or fraudulent. The court has no power to alter or amend the contract which the parties themselves made.

2. That Ohio through a continuous and unvarying course of conduct on its part under the plain

requirements of said written agreement, since the execution thereof and at all times thereafter during the period questioned in this suit, in all things complied with the clear terms and provisions of said written agreement of June 15, 1922.

3. Laches in asserting their claims bar Plaintiffs from any recovery herein.

4. The statutes of limitation of the State of Montana bar Plaintiffs from any recovery herein.

5. Ohio is not a trustee for Plaintiffs. [142]

6. The monthly statements of account furnished by Ohio to Troy, Potlatch and Inland and the acceptance and retention of the moneys paid to them respectively by Ohio with knowledge that Ohio repeatedly refused to make any changes in its accounting and made each payment in full settlement of each statement constitutes an account stated between Ohio and Plaintiffs and may not now be challenged by them.

Plaintiffs shall have exceptions to each and all of the foregoing Findings of Fact and Conclusions of Law. It Is Ordered that plaintiffs recover nothing and that Defendant do have judgment in its favor and shall recover from Plaintiffs all costs herein expended.

Dated and done in Open Court this 24th day of February, 1951.

/s/ CHARLES N. PRAY,
Judge.

[Endorsed]: Filed February 24, 1951. [143]

In the District Court of the United States in and
for the District of Montana, Great Falls Division

Civil No. 956

POTLATCH OIL AND REFINING COMPANY,
a Corporation, and JEAN P. GERLOUGH,
STANLEY H. HODGMAN, and ROY E.
LARSON, as Trustees of That Certain Trust
Known as INLAND EMPIRE OIL AND
GAS SYNDICATE, a Common Law Trust,

Plaintiffs,

vs.

THE OHIO OIL COMPANY, a Corporation,

Defendant.

JUDGMENT

This matter having come on for trial before the Court on the 22nd day of December, 1949, trial briefs having been thereafter submitted and the Court having rendered a written memorandum decision filed herein on January 22, 1951, and having made supplemental findings of fact and conclusions of law on the 24th day of February, 1951;

It Is Ordered, Adjudged and Decreed that Plaintiffs take nothing by this suit and that the Defendant recover all its costs herein expended, and said costs are assessed in the sum of \$349.07; Exceptions allowed Plaintiffs.

Done in Open Court this 24th day of February, 1951.

By the Court:

/s/ CHARLES N. PRAY,
Judge.

[Endorsed]: Filed and entered February 24, 1951. [145]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE CIRCUIT
COURT OF APPEALS FOR THE NINTH
CIRCUIT .

Notice is hereby given that Potlatch Oil and Refining Company, a corporation, and Jean P. Gerlough, Stanley H. Hodgman, and Roy E. Larson, as Trustees of that certain trust known as Inland Empire Oil and Gas Syndicate, a common law trust, Plaintiffs above named, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the 24th day of February, 1951.

/s/ E. J. McCABE,

/s/ E. J. McCABE, JR.,

Attorneys for Appellants, Potlatch Oil and Refining Company, a Corporation, and Jean P. Gerlough, Stanley H. Hodgman, and Roy E. Larson, as Trustees of That Certain Trust Known as Inland Empire Oil and Gas Syndicate, a Common Law Trust.

[Endorsed]: Filed March 26, 1951. [147]

In the District Court of the United States, in and
for the District of Montana, Great Falls Division

Civil Action No. 956

POTLATCH OIL AND REFINING COMPANY,
a Corporation; JEAN P. GERLOUGH, STAN-
LEY H. HODGMAN, and ROY E. LARSON,
Trustees of That Certain Association Known
as INLAND EMPIRE OIL AND GAS SYN-
DICATE,

Plaintiffs,

vs.

THE OHIO OIL COMPANY, a Corporation,
Defendant.

PROCEEDINGS

Before: Honorable Charles N. Pray,
United States District Judge.

December 22nd and 23rd, 1949

Appearances:

ERNEST J. McCABE,
Attorney at Law,
For Plaintiff.

LOUIS P. DONOVAN,
Attorney at Law;

W. H. EVERETT,
Attorney at Law,
For Defendant. [152]

Be It Remembered, That the above-entitled cause came on regularly for hearing in the United States District Court, in and for the District of Montana, in the Federal Building, at Great Falls, Montana, on December 22nd and 23rd, 1949, before the Honorable Charles N. Pray, United States District Judge, presiding.

(Whereupon the following proceedings were had and done, to wit:)

The Court: Gentlemen, are you ready to proceed with this matter this morning?

Mr. McCabe: Plaintiffs are ready, your Honor.

Mr. Donovan: May it please the court, we have been discussing with counsel for the plaintiff the extent of the hearing today, and I think we agreed with counsel that if it is agreeable to the court that only the preliminary matters would be determined today, or heard and determined in this hearing, namely, the issues that must be determined as to whether or not the plaintiffs are entitled to an accounting at this time.

The Court: I see. Well, as I understand——

Mr. Donovan: We tried to reduce that to a stipulation but we didn't seem to get together quite on the wording of the stipulation.

The Court: Before we get to the point of an accounting, actual accounting, we have been overruling the [157] motion to dismiss, and, of course, there is something about your renewing those questions of law later on in the trial, and I suppose what you want to do this morning is put in such evidence as may be necessary to fully inform the

court. One of the reasons I overruled the motion was their setting up the bar of statutes and laches, and I didn't think sufficient appeared on the face of the complaint to warrant any other course to pursue then, and I would like to have you put in some evidence especially on that point with the point to bar of statute and laches; I want to see what there is in that because of the great lapse of time between the first conference and the beginning of the suit.

Mr. Donovan: Yes, your Honor.

The Court: I would like to have you make it as clear as possible on that point.

Mr. Donovan: If the court will permit me, I would like at this time to move that Mr. W. H. Everett of Casper, Wyoming, be admitted to practice law in this court for the purpose of this case. Mr. Everett is a member of the Bar of the State of Wyoming and the Supreme Court of the United States.

The Court: Very well, he may be admitted to practice in this court for that purpose.

Mr. Everett: Thank you, sir. The court referred to the first item I had set forth and that was the court's [158] Order of April 7, 1948, in which the court overruled the defendant's consolidated motion for severance of claims, to dismiss for lack of capacity to sue, to dismiss on ground of statute of limitations, for more definite statement, and to strike certain portions of plaintiffs' complaint. The court stated in that order that, "The court is now of the opinion the motion should be denied with

the right reserved of renewal of said motion or any appropriate subdivision at the trial of said cause, and such is the order herein.”

We would like to reassert that motion in its entirety, but go ahead and proceed, if we can, under Rule 42 (b) of the Federal Rules, as amended, simply preserving every right and all of our positions which were asserted in that motion and not be considered to have waived any of them, but not insisting that the court again rule on the motion at this particular moment.

Rule 42 (b) provides that the court for its convenience or to avoid prejudice may order a separate trial of any claim, cross-claim, or any third-party claim, or of any separate issue, or of any number of claims, cross-claims, counter-claims, third-party claims, or issues.

In that connection and without waiving the rights we have under the motion we feel that now would be a proper time for the court to enter an order so we will know the extent and scope of the hearing; and Mr. Donovan had prepared [159] a stipulation, as had Mr. McCabe, in an effort to stipulate on those issues that would be disposed of this morning, and we were unable—I was unable to get the gentlemen in agreement in connection with it, and I might say——

The Court: Can't you proceed short of an accounting?

Mr. Everett: Yes, we can proceed short of an accounting, your Honor, and that I think is what both parties want to do at this time. However, I

believe it would be proper to have an order entered and we have prepared an order which can be changed somewhat, and I will be glad to have the court hear Mr. McCabe on the matter. I would say that the parties are in agreement; that the preliminary issues as to statute, the laches, that they are in court on that issue being tried today; the issue as it is set up in defendant's second and third affirmative defenses, which are the statutes of limitation of Montana; and that the court determine also as a preliminary issue the merits of the four affirmative defenses, which is the matter of accounts stated, and the court make a finding on those matters prior to the time that any of those issues—I mean prior to the time that any question of accounting is considered.

Now the only item where the parties are at variance, and I think my observation is we are somewhat in accord in principle and it might be in the matter of stating [160] it. Mr. McCabe sent to me a proposed form of stipulation in which there is item (a) and he proposes to stipulate the issue should be interpretation and meaning of the operating contract described in plaintiffs' complaint. Well, I couldn't conscientiously stipulate to that as being a correct statement of the issue. First, it was too broad. Secondly, insofar as our position is concerned the contract speaks for itself and needs no interpretation; so that its meaning is clear we think. That is our position, of course. But we do have and I will read from the proposed order

what we believe is a proper statement on that one item.

Mr. McCabe: Have you got a copy of the proposed order?

Mr. Everett: Did you get the one in the mail Mr. Donovan sent to you day before yesterday?

(Whereupon an off-the-record discussion was had by counsel.)

Mr. Everett: The proposed order on that one item and as we think the issues should be stated, your Honor, is as follows, and I will read it:

“(a) That the court determine, as a preliminary issue, whether oral evidence of the character offered by the deposition of T. P. Jones on file herein (Deposition of T. P. Jones, pages 12, 13, 17, 19, 52, 57, 58) to the effect that it was orally agreed by the parties thereto that no expenses [161] would be charged to Troy-Sweet Grass Oil Syndicate, or its successors, where same were incurred “off of the lease or any place off of that lease” or for overhead or supervision of operations in the development and production of the lease or even for pumping wells situated thereon (Deposition of Jones, pages 12, 13, 17, 19), and that no cost of operation of wells after the well was drilled and put on production was to be chargeable to Troy-Sweet Grass Oil Syndicate, or its successors (Deposition of Jones, page 52), and that the intention of the parties to the operating agreement was to the effect that the Ohio Oil Company should drill the wells and put them in production, and that

Troy-Sweet Grass Oil Syndicate should pay its 45% of such expenses, and from there on should pay nothing and be chargeable with nothing for operation (Deposition of Jones, page 53) or any similar oral testimony from other witnesses to such effect is admissible for the purpose of (a) modifying or explaining the terms of the Operating Agreement, a copy of which is attached to Plaintiffs' Complaint herein marked Exhibit "A" thereof, or (b) interpreting the same along the lines above indicated. And if the court finds that such testimony is admissible, then that the court further find what the actual agreement dated June 15, 1922, between Troy-Sweet Grass Oil Syndicate and The Ohio Oil Company was in regard to such matters, and that the court adjudge and declare the true and actual meaning of [162] the said Operating Agreement made and entered into between Troy-Sweet Grass Oil Syndicate, as party of the first part, and the Ohio Oil Company, as party of the second part, dated June 15, 1922, a copy of which is attached to Plaintiffs' Complaint herein and marked Exhibit "A" hereof; and what costs and expenses of developing and operating said lands for oil and gas purposes, as incurred by the Ohio Oil Company, could properly be charged in part (to the extent of 45% thereof) to Troy-Sweet Grass Oil Syndicate, and its successors in interest."

Mr. McCabe: With respect to this proposed order, your Honor, it seems to me that it attempts to state one part of the deposition without considering other evidence in the deposition. The ques-

tion presented by this proposal here is that preliminary testimony along these particular lines stated by counsel whether that is admissible without the order further showing that this preliminary testimony is a part of the conversation immediately preceding the setting up of the final agreement, and that these terms, the attorney for the defendant company said he would incorporate into the written agreement and he went away and came back with a written agreement changing the participating interest from fifty-fifty to forty-five to the Plaintiffs, or to the Troy-Sweet Grass, which is the agreement involved, and fifty-five to the Ohio Oil Company. And again the objection was made [163] to that that it didn't state the agreement because it didn't conform to their understanding that the expenses would be limited to certain charges, and that this will consider all the deposition, and that the attorney for the company, the company prepared the entire written agreement, he went away and returned with another agreement and pointed out to Mr. Jones a clause which expressly limited the charges to be made, which said that in no event shall the party of the first part, that is the Sweet Grass Company, the predecessor in interest of the present Plaintiffs, would be finally held or charged beyond its interest in the equipment and the production in and from the land. And Mr. Jones' testimony is to the effect that no, that it was understood that no charges would be made for any expenses off of the lease, no overhead charges of 10% which was put into the agreement, and counsel for

the defendant returned and explained to Mr. Jones that under that clause it showed that the expense was limited, and that thereafter they cannot start charging all over the country, trips to Casper and all over the country, and put in an arbitrary overhead of 10% not even provided in the contract, and he goes ahead and explains that. Now we say by reason of the first part of the contract which provides that the Ohio Oil Company should operate and develop the company and be reimbursed for expenditures on the basis of the forty-five per cent charged against the Troy-Sweet Grass, and [164] then the latter part a clause in the same paragraph, as I recall, turns right around and expressly limits that expense to definite interests in the company in the equipment and not upon the land. And I say that, your Honor——

The Court: That is what this witness testifies to, is it?

Mr. McCabe: What is that?

The Court: That is what this witness says in the deposition?

Mr. McCabe: Yes, that all appears in there.

The Court: Well, of course, we will have to thrash that out and see what they say or the other says. We have got to get both sides of this. Did they finally sign the contract, did they?

Mr. McCabe: Yes, your Honor.

The Court: The Troy Company signed the contract?

Mr. McCabe: Yes, this was right at the time.

The Court: After they had this discussion and just talked it over they signed the contract?

Mr. McCabe: Exactly. And then there were three different drafts of that contract presented.

Mr. Everett: I don't want to interrupt Mr. McCabe——

The Court: You object?

Mr. McCabe: I object, naturally. [165]

The Court: About the affidavit of Jones, is it?

Mr. Donovan: Yes, your Honor, that is the testimony of Jones.

Mr. Everett: Here is the proposed order, the one we are discussing, your Honor.

The Court: I don't know that there is anything so urgent about any order being signed so far as we are now concerned, and we can have the understanding we will go into this case and develop it, and you have your motions in mind and reserve them, and take evidence and see how far we can go, and then wait and see what we are going to do before we reach the point of an accounting or making any order in respect to it. Isn't that about the situation?

Mr. Everett: We, of course, would like to have the issue defined, your Honor, if we could, your Honor, by an appropriate order, and I don't mean to be sticky or stuffy about it but I would like to know just how far we are expected to go.

The Court: You have got a complaint and answer, haven't you, and you have got your motions?

Mr. Everett: Yes.

The Court: Those points are all material to this, aren't they?

Mr. Everett: Yes, sir.

The Court: And also the allegations of [166] the complaint. Well, now, short of an accounting can't you go ahead under the pleadings as they stand?

Mr. Everett: If the accounting phase is left out, I would think that we could. Just from the experience I have had in other matters I am afraid what we will find we will get down here in some of the presentation and we will make some objections and find things which may be related to accounting or related to something else not spelled out in the issues and that is why I thought it was important in making a good record of the case and for the court's convenience and orderly presentation that we try and outline——

The Court: Here is an order here Mr. McCabe hasn't seen until this morning and I don't want to force him to go into it immediately; let him have time to look it over and perhaps he will agree with you. Perhaps you two will agree on an order the court may sign. It is all right with the court if you can.

Mr. Everett: I will be glad to make that effort, your Honor.

The Court: Perhaps you can eliminate some things, If you served this before, he probably would be able to tell what he wanted to do.

Mr. McCabe: Yes, your Honor, yesterday afternoon at five o'clock I received this letter and counsel

very graciously let me look at the stipulation set forth upon which [167] this order is based, and I looked the stipulation over and it looked to me from the stipulation that to proceed on the stipulation they wanted to separate certain issuable facts in regard to this proceeding, which would naturally prejudice me in the presentation of my case, and I told them I wouldn't be willing to do so. However, I prepared a form of stipulation, your Honor, which I submitted to them which I think covered all the points and at the same time protects me in the presentation of my case.

The Court: Without any further discussion about it I will give you a half an hour to see whether you can get together and make an order and if not, we will proceed anyway.

Mr. Everett: Thank you.

(Whereupon court recessed at 10:30 a.m.)

(Court resumed, pursuant to recess, at 11:00 o'clock a.m., at which time all counsel were present.)

The Court: Proceed.

Mr. Everett: May it please the court, we have arrived at a wording that is satisfactory for the order, and I apologize for the present looks of it and if you like, we can have it rewritten.

The Court: No, it is all right.

Mr. Everett: We understand, your Honor, that this is without prejudice to anything that may have been [168] asserted in our motion.

The Court: Oh, yes, of course. Some evidence

probably will be introduced and you will object to it, and the court will receive it subject to your objection because I can see some important questions arise here that the court will have to consider later on after hearing the proof.

Mr. Everett: I think the record shows, but if it doesn't already show, I would like to show that we renewed our consolidated motion and submit it without further argument.

The Court: All right. Very well, you may proceed, gentlemen.

Mr. McCabe: Does your Honor desire a preliminary statement or should we just proceed with the evidence?

The Court: I think we can go ahead now. I think I have gathered enough of the case, that it won't necessitate reading of your complaint and answer and that you may proceed now to introduce your proof and your stipulation and order of court.

(Whereupon the said Order referred to on page 16 of this transcript is in words and figures as follows, to wit:)

In the District Court of the United States in and
for the District of Montana, Great Falls Division [169]

Civil No. 956

POTLATCH OIL AND REFINING COMPANY,
a Corporation, and JEAN P. GERLOUGH,
STANLEY H. HODGMAN and ROY E.
LARSON, as Trustees of That Certain Trust
Known as INLAND EMPIRE OIL AND
GAS SYNDICATE, a Common Law Trust,
Plaintiffs,

vs.

THE OHIO OIL COMPANY, a Corporation,
Defendant.

ORDER

The Court, in furtherance of convenience of the parties and the Court, will order a trial of the claims of the respective parties, hereinafter specified; and the Court, being fully advised in the premises, and It Appearing to the Court that the convenience of the Court and parties to this action would be furthered by the granting of said request and ordering a trial upon the issues and claims hereinafter specified;

Now, Therefore, pursuant to the provisions of Rule 42 (b) of the Rules of Civil Procedure, It Is Ordered that the following issues be tried prior to any accounting that may be taken in this case, if an accounting is found necessary. Said issues and claims are as follows:

(a) That the Court determine, as an issue whether oral evidence of the character offered by the Deposition of [170] T. P. Jones on file herein or any similar oral testimony from other witnesses is admissible for the purpose of (a) modifying or explaining the terms of the Operating Agreement, a copy of which is attached to Plaintiffs' Complaint herein and marked Exhibit "A" thereof, or (b) interpreting the same; and if the Court finds that such testimony is admissible, then that the Court further find what the actual agreement dated June 15, 1922, between Troy-Sweet Grass Oil Syndicate and the Ohio Oil Company was in regard to such matters, and that the Court adjudge and declare the true and actual meaning of the said Operating Agreement made and entered into between Troy-Sweet Grass Oil Syndicate, as party of the first part, and the Ohio Oil Company as party of the second part, dated June 15, 1922, a copy of which is attached to Plaintiffs' Complaint herein and marked Exhibit "A" thereof; and what costs and expenses of developing and operating said lands for oil and gas purposes, as incurred by the Ohio Oil Company, could properly be charged in part (to the extent of 45% thereof) to Troy-Sweet Grass Oil Syndicate, and its successors in interest;

(b) That the Court determine, as an issue herein, the merits of the defendant's First Affirmative Defense set up in Defendant's Answer herein, pleading the defense of laches as a bar to the cause of action set forth in Plaintiffs' Complaint; [171]

(c) That the Court determine, as an issue herein,

the merits of the Defendant's Second Affirmative Defense and defendant's Third Affirmative Defense set forth in its Answer herein, wherein defendant pleads the five-year statute of limitations in its Second Affirmative Defense and the eight-year statute of limitations in its Third Affirmative Defense;

(d) That the Court determine, as an issue herein, the merits of defendant's Fourth Affirmative Defense set forth in its Answer herein, wherein defendant pleads in effect that there was an account stated between the plaintiffs herein and the defendant herein by their respective monthly statements; and

(e) That a finding and decision be made by the Court on the foregoing issues before any trial is ordered upon the question of an accounting herein.

Done in Open Court, this 22nd day of December, A.D. 1949.

CHARLES N. PRAY,
Judge.

[Endorsed]: Filed December 22, 1949.

Mr. McCabe: Your Honor, there are two depositions that go to the bearing of all of these questions and I think an orderly procedure requires us to introduce and read the depositions.

The Court: You may do that and perhaps the court will have to read them afterwards. You can

offer the [172] depositions. State the substance of them so the court will know what they are about and perhaps we don't need to go ahead now and read them and they will be received in evidence subject to the objection. I am referring now to your depositions that are calculated to vary the terms of a written contract, of your operating agreement, isn't that it?

Mr. McCabe: Yes, sir, we claim that they don't.

The Court: What is that?

Mr. McCabe: We claim they don't vary the terms of the written contract but explain it according to the statutory rule.

Mr. Everett: Our understanding with reference to the deposition and as stated in the Jones deposition was that this would be presented question by question so that we would have the opportunity to raise any objection with reference thereto as the record was made from the deposition and I think that that would be the better way to handle it, not only for the court's convenience but also for convenience of counsel. We could state, I suppose, in substance——

The Court: The depositions are here with the Clerk on oath?

Mr. McCabe: No, the Jones deposition is open in the form of an order of court to permit certain copies to be made for the exhibits.

The Court: Does the defendant have those [173] copies? Does the defense know what these depositions are?

Mr. McCabe: That was in another case. There

are two other cases against the Texas Company based on this contract. The Texas Company is the successor to the interests of the Ohio Oil Company in 1933 or 1934, and there were certain original exhibits and copies made a part of Mr. Jones' deposition, which are material in the trial of the Texas cases. Therefore, in order to identify these records as in the Jones deposition in this case by proper identification, and taking the depositions of Wilson it was necessary for us to obtain certified copies by the Clerk, and pursuant to that and with the consent of counsel, Mr. Donovan, that the depositions could be opened for the purpose of making these copies and later used in the Texas cases. We can expedite this matter very much if counsel would stipulate that the depositions of T. P. Jones and R. D. Wilson would be entered, would be deemed offered and received in evidence subject to the objections made by counsel at the time of the hearing and subject to the objection—well, it is pretty difficult to make a stipulation along the lines——

The Court: Of course, counsel would know what they were going to object to in those depositions. They are familiar with them, aren't you?

Mr. Everett: We would stipulate we would object to the entire deposition as being incompetent, irrelevant and [174] immaterial and contrary to the parol evidence rule, and I could go on and list a dozen, and if the court wanted to allow those objections to apply to each question in the deposition, the appropriate objection.

The Court: I suppose you have indicated what parts of it you object to?

Mr. Everett: I hadn't. Specifically and completely I hadn't, your Honor.

The Court: I am just trying to figure on time and save time and accomplish the same objects.

Mr. McCabe: Under the rule all objections made at the time the objection taken are waived by them objecting further, except the form of the question. No, that they must make objection to the substance of the testimony and that unless they do so the form of the question is waived. And there are two or three leading questions in there and we say the court in its discretion is authorized to permit them.

The Court: Of course, these were all taken on written interrogatories, were they?

Mr. McCabe: No.

Mr. Everett: No, these two are all oral interrogations, verbal interrogations.

The Court: All taken down and objected to and both sides represented? [175]

Mr. Everett: Both sides represented and the stipulation under which they were taken, however, expressly reserved to the defendant each and all of the defendant's objections to relevancy, materiality and competency of the testimony of Plaintiffs' witness, and any other objections we might have with the one exception, objection to form of question should be stated at the time the deposition was taken.

The Court: Well, you have practically covered it with your objections now.

Mr. Everett: If you would like me to read my summary of my objections, I believe I could do that.

The Court: There is no need of going through all that now. It is quite lengthy, isn't it?

Mr. Everett: This is 90 pages.

The Court: Of course, I will have to read it anyway. You can offer it and it may be received subject to the defendant's objections and you may state your objections in the record.

Mr. Everett: It being understood those objections, the applicable objection would apply to the applicable question and answer?

The Court: Yes, sure.

Mr. McCabe: That is right.

Mr. Everett: Well, without waiving the [176] right to have the matter presented by question and answer form——

The Court: If you are not going to agree to this, why we, of course, will have to go through the long way.

Mr. Everett: Let me finish my statement, your Honor; I think it will be all right.

The Court: All right, go ahead and finish it.

Mr. Everett: But in an effort to cooperate with the court and counsel for the plaintiffs we will state, the defendant will state its objections to the entire deposition and specific objections which might apply to parts thereof on the understanding that the appropriate objection shall apply and will be considered by the court in connection with each

respective question and answer in said deposition referred to or in the exhibits offered in connection therewith.

Mr. McCabe: Except as to the form of the question.

Mr. Everett: As to the form of the question which the court will consider only when the objection appears in the deposition to have been made to the form of the question.

Mr. McCabe: And the objection to questions of secondary evidence. If your Honor please, there were some copies the defendants had the original in its position and we had to have this witness identify copies and have them received in evidence in the event the defendant would fail or refuse to produce the originals in the trial.

Mr. Everett: I think we are going to have [177] to back up there. I don't know that I can go for that, Mr. McCabe. Are these the exhibits?

The Clerk (Mr. Kegel): They are in connection with the Jones deposition.

Mr. Everett: Well, I can't agree to Mr. McCabe's exception. Now, if you will back up to where I left off, I will try to go on with my statement.

Mr. McCabe: May the court have the reporter strike out that suggestion I made?

The Court: Very well, you may strike out the last suggestion made by Mr. McCabe, not being agreed to by counsel for the defendant.

Mr. Everett: The defendant waives any objection from the standpoint of the best evidence rule to Plaintiffs' Exhibit 26 attached to the Jones dep-

osition, Plaintiffs' Exhibit 2 attached to the Jones deposition, Plaintiffs' Exhibit 27 attached to the Jones deposition, Plaintiffs' Exhibit 29 attached to the Jones deposition, and states further in setting forth said objections that it appears from the deposition itself that Mr. Jones disqualifies and discredits himself as a witness in this case by his statements therein and that the entire deposition should be stricken. Moreover, and referring to the specific objections, the specific and general objections above alluded to they are hereby asserted as follows: Defendant objects to any testimony as to direct transactions [178] or oral communications between the proposed witness, T. P. Jones, and Mr. John McFayden, Mr. F. E. Hurley, Mr. A. M. Sellery, Mr. F. E. Firmin, or any other deceased agent of The Ohio Oil Company, all as provided by the statutes of Montana in such cases; objects to the testimony of T. P. Jones as being incompetent, irrelevant and immaterial to any issue in this case; objects to any testimony with reference to verbal negotiations or understandings had prior to June 15th, 1922, or up to the date of execution of the contract attached to plaintiffs' complaint herein as Exhibit "A," as being in violation of the parol evidence rule, and as an attempt to vary or contradict the terms of a written contract.

Defendant further objects on the further ground that the alleged cause of action, if any, is barred by laches and by the statutes, by the applicable statutes of limitations of the state of Montana. Defendant objects on the further ground that the

questions call for testimony which appears on its face to be an attempt to revise or modify the terms of a written contract. Defendant objects to the testimony on the grounds that it is contrary to the court's order and outside of the issues ordered to be tried by court order of December 22nd, 1949, and is an attempt to open an account stated.

Defendant objects to any testimony concerning oral conversations with Mr. A. H. Gee, in that it appears [179] from the written contract attached as Exhibit "A" to Plaintiffs' complaint herein that such contract was executed and put into effect by the signature of Mr. F. E. Hurley, and from the record that the contract, that said contract was made and entered into with Troy-Sweet Grass Oil Syndicate and not with plaintiffs, or either of them.

Defendant further objects to the questions and testimony offered by plaintiffs through this witness for the reason that plaintiffs not being parties to the contract of June 15th, 1922, are estopped to explain, vary, or contradict its terms by any evidence whatever, even assuming that there were any verbal representations or verbal understandings with reference thereto.

Moreover, if the written contract has not clearly set forth the understanding and agreement of the parties thereto, plaintiffs' remedy, if any, would have been an action for reformation which is barred by limitations of statutes of Montana.

Furthermore, plaintiffs instead of seeking reformation accepted vast sums of money in full payment for their representative proportionate parts

of the proceeds from the accounts stated which have clearly shown monthly for more than twenty years the costs and expenses charged under said contract, which said costs and expenses have at all times been specified in categories and in accounts stated contrary [180] to what plaintiffs contend the contract calls for if properly written in accordance with their contention, and plaintiffs are barred by laches, and this proposed testimony or evidence is not admissible for any purpose.

Defendant objects to the questions and answers on the further ground that Potlatch Oil and Refining Company by instrument dated August 18th, 1923, referred to in the papers and stipulation on file herein, and being an assignment from Troy-Sweet Grass Oil Syndicate to Potlatch Oil and Refining Company, expressly agreed to keep and perform the terms and conditions of said The Ohio Oil Company Troy-Sweet Grass Oil Syndicate agreement of June 15th, 1922, and that Inland Empire Oil and Gas Syndicate by written instrument executed in January, 1923, expressly acquired its interest subject to the interest of The Ohio Oil Company under said contract of June 15th, 1922.

Now, if you want to further shorten the matter and under the same statement that I have made, your Honor, with respect to the T. P. Jones deposition, if it is satisfactory with the court to handle in the same way, I am willing to make that same statement or have this same statement of objections apply to the Plaintiffs' deposition of R. E. Wilson; which you will offer?

Mr. McCabe: Before that I desire it be further stipulated as a part of this stipulation that questions to [181] the witness T. P. Jones and evidence and testimony in reply to, or in answer to such questions are subject to all valid legal objections which may be available thereto on behalf of the plaintiffs except as to the form of the question.

Mr. Everett: Then I understand that the court will make up the record then of the testimony of Jones and Wilson, ruling on these objections question by question as the court goes through them, is that my understanding?

The Court: Well, it seems to me that it might be disposed of in some other way. I don't know that I just got the drift of your further stipulation. The court now, of course, in going through the deposition would pass upon the objections made here and whatever stipulation you entered into in respect to the deposition.

Mr. McCabe: It seems any question or propriety of objection is determined by the final decision of the court and then on appeal the question whether this evidence is admissible or other evidence is admissible is available to the defendant. We can stipulate here all of the evidence and all of the questions are subject to objections, pertinent objections, therefore, I don't see any necessity of the court in its opinion going ahead and ruling on this question any more than you would incorporate in the court's opinion the evidence offered in the trial and say this evidence is offered.

Mr. Everett: What are you going to have [182] in the record?

Mr. McCabe: You are going to have this stipulation as part of the trial record.

Mr. Everett: Your thought is the entire deposition goes in on record as appealed?

Mr. McCabe: Sure.

Mr. Everett: We will do that. I was of the opinion the court would rule on our objection and sustain or overrule it, and as to those sustained why the record would so show, so that when we have a record of Mr. Jones' testimony if any part of it is admissible, it would be the question and answer itself rather than the whole thing because certainly most of this Jones deposition and I think all of the Wilson deposition are not proper testimony, and unless we can do that as a courtesy to the court, he has to go over it now and we are trying to save him the trouble of going over it today and again when he goes into it in chambers, and if we can do that, we might as well go ahead, and I want that record to show what went into it and what didn't go into it. My thought was the court in going through the deposition would apply the appropriate objection to this question and that question and would rule on it so the record would be made up in accordance with his ruling.

Mr. McCabe: That is in effect accomplished by this stipulation. [183]

Mr. Everett: I haven't stipulated to anything. I just stated I would do this. I am not agreeing

with you about it, Mr. McCabe. I said I will do that under those circumstances.

The Court: Well, of course, the court will have to go through the depositions the same as it does other depositions. There won't be any different rule applied here. The court will have to go through and make a ruling on all material matters except perhaps the form of a question objected as to leading or something of that sort would be of no consequence but any material objection that the court deems a material objection to some substantial matter and the court can rule on that.

Mr. Everett: Let me see if I understand it clearly, your Honor. Let's take this Jones deposition, for example——

The Court: Well, we will put it this way, the court will have to rule on the questions and answers and objections; does that cover it?

Mr. Everett: That covers it so what goes into the record shows the court's ruling. That is fine, sir.

Mr. McCabe: How about the Wilson deposition?

Mr. Everett: I will make the same statement with reference to the Wilson deposition. Do you have it so I can look at the exhibits and so I can cover that secondary [184] evidence for you, Mr. McCabe?

The Court: Any further documentary evidence and proof?

Mr. Everett: Sir?

The Court: Any further documentary evidence on the part of the plaintiffs, depositions or otherwise to be introduced?

Mr. McCabe: Yes, I agree to the Wilson under the same conditions as stated in the Jones.

The Court: After the Wilson what next is there? What other evidence have you got?

Mr. McCabe: Other evidence?

The Court: Other depositions, other documentary evidence.

Mr. McCabe: No, there is no further depositions. Now, there is oral evidence.

The Court: All right, call your first witness and let's begin.

Mr. Everett: You want to go through this Wilson deposition, Mr. McCabe? You want me to cover that matter of secondary evidence, and you have some exhibits attached to it as I remember it?

Mr. McCabe: I think that should be done.

Mr. Everett: In connection with the deposition of R. E. Wilson, offered by plaintiffs, we understand that the [185] court will rule on each question and answer and objections thereto as in connection with the deposition of T. P. Jones, and that the objections and exceptions as outlined by counsel for defendant in connection with the T. P. Jones deposition will be equally applicable to the deposition of R. E. Wilson.

Defendant waives any objection with respect to the following exhibits being copies rather than originals: Plaintiffs' Exhibits 4, 6, 8, 9, 11, 13, 14, 17, 18, and 18-a page 1 and 18-a pages 2, 19, 21, 21-a, 23; waive only the objection with respect to the secondary evidence rule, the best evidence rule, excuse me.

Mr. McCabe: You objected to 5?

(Whereupon counsel off the record checked the exhibits:)

Mr. McCabe: Now, Mr. Everett and Mr. Donovan, a notice to produce certain documents in the trial of the case and preliminary notice was served upon you, and preliminary notice or informative notice a couple months ago, and final notice to produce on December first, certain records and documents in the possession of the defendant. Do you have those records present pursuant to that notice?

Mr. Everett: We have such of them as we could find.

Mr. McCabe: Sir?

Mr. Everett: We have such of them as we [186] could find in our files and records. I might state in answer to your demand for No. 1 you demand that form or written agreement which Mr. F. E. Hurley and Mr. A. M. Gee had with them and which they submitted to Mr. T. P. Jones as a trustee of Troy-Sweet Grass Oil Syndicate on or about the 15th day of June for consideration during the negotiations, and in answer to that demand I would like to refer to the deposition of Mr. A. M. Gee, which will be opened—I can open it now, your Honor? I have a copy of it here.

The Court: Very well.

Mr. Everett: Do you want me to open it?

The Court: Yes. In connection with this other?

Mr. Everett: Yes, sir.

Mr. Everett: Let the record show that the depo-

sition of Mr. A. M. Gee is opened by the gentleman in the presence of counsel and the court. In which he states after the operating agreement was presented by him that no changes were made. That is in answer to written interrogatory, defendant's written interrogatory 7 (d) and (e).

And also his testimony in answer to plaintiffs' interrogatory 15, which referred to the Jones deposition, in which Mr. Gee is supposed to have stated or alleged to have stated that he would go and rewrite the contract and include it: "I will go and rewrite it and include it in there." Referring to the Jones, the statement in the Jones deposition which [187] is attributed to Mr. Gee. Mr. Gee stated, he answered that interrogatory that he did not. That we will object to your notice to produce, Mr. McCabe, in response to item 2. Has the original of your notice to produce been filed in the papers in this case?

Mr. Everett: How would the court like to do this? Would you like me to go through this list of documents, there are some 40 of them here, producing each of these, as we have, and explanation of those we haven't? What do you prefer? I have asked Mr. McCabe to produce a number of documents and we might get together and put together what we have, the letters he asked for and the responses I asked for.

The Court: Yes, you might do that, or when a witness is being examined and some reference is made to the article or document required then the explanation could come at that time. It may be

that some of these exhibits that have been requested on both sides won't be referred to at all; maybe they won't come in.

Mr. McCabe: I will be glad to do that because Mr. Everett served me with a copy Sunday of a notice and I proceeded to get busy, and we have acquired—here they are to give you an idea the letters, and some we could find and some we couldn't. So if we could get together before court opens this afternoon, we could then determine what we have and what we haven't, and what we could produce and what we [188] could not.

The Court: That is all right if you want to do it that way.

Mr. Everett: I might offer this further suggestion, Mr. McCabe, in order to keep the record down some. There are a number of documents you have called for and some I have called for about which there is no dispute and no necessity to produce them in the present state of the record, for instance the Troy-Sweet Grass contract copy attached to your complaint and which we admit is the contract.

Mr. McCabe: That can be covered by a brief stipulation when we get our letters submitted.

Mr. Everett: I don't like to try lawsuits by stipulations, and if you want to——

Mr. McCabe: We will give you everything we have.

The Court: During the course of your introduction of evidence if a certain document or paper is called for the explanation could be made then. You

may save time because you both called for things that won't be needed very likely.

Mr. McCabe: If I correctly understand the court, as we proceed with the trial after we have found out what records we have or what we haven't——

The Court: You put a witness on the stand and the witness discloses a certain instrument or document necessary, then you can turn to the gentlemen on the other side [189] and say, "Have you produced that?" And then he can give you an explanation and say he hasn't got it and it can't be found.

Mr. McCabe: Of course, by reason of the stipulation made this morning with respect to waiver of objection as to copies of letters, well, of course, we can get those out of the way. We have a witness here available, I could start with the examination.

The Court: You may start in.

Mr. Everett: If I could interpose one thing. The original notice to produce which I served on Mr. McCabe which shows his acceptance of service, I received it the day I left Casper so I haven't had the opportunity to file it with the Clerk and I would like to file it.

The Court: Very well, it may be filed.

Mr. McCabe: If your Honor please, may I examine the witness from here? To examine him from there I would have to holler pretty loud.

The Court: Yes, that is all right.

JEAN P. GERLOUGH

was called as a witness, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. McCabe:

Q. What is your name? [190]

A. Jean P. Gerlough.

Q. Where do you reside, Mr. Gerlough?

A. Shelby, Montana.

Q. Do you sustain any position or relation to Inland Empire Oil and Gas Syndicate?

A. I do.

Q. The plaintiff in this action, one of the plaintiffs?

A. I do.

Q. And what is your position?

A. I am a trustee of Inland Empire Oil and Gas Syndicate and also Secretary-Treasurer and General Manager of the Syndicate.

Q. How long have you sustained that position with Inland Oil and Gas Syndicate?

A. I have been a trustee since the organization of the Syndicate in May, 1922.

Q. And how long have you been General Manager of the Syndicate?

A. I have been General Manager since 1926. I have been Secretary of the Syndicate since the beginning in 1922.

Q. Are you acquainted with T. P. Jones?

A. Yes, I am.

Q. And R. E. Wilson? A. Yes.

Q. What, if any, position did those gentlemen hold with the Inland Empire Oil and Gas Syndicate?

(Testimony of Jean P. Gerlough.)

A. Mr. Wilson was President of it, trustee and President of Inland Empire Oil & Gas when formed and Mr. Jones was a [191] trustee of the Syndicate.

Q. And did Mr. Wilson have any managerial position with the Syndicate?

A. Yes, Mr. Wilson was General Manager up until 1926.

Q. And approximately what time of the year of 1926 did he sever his relations as General Manager?

A. In April, 1926.

Q. And Mr. Jones, how long did he hold the position of trustee in the Syndicate?

A. Mr. Jones was a trustee in the Syndicate until 1941.

Q. And do you recall the approximate time of the year of 1941?

A. No, I do not remember the month.

Q. Now, at the time of the institution of the within action who were the trustees of Inland Empire Oil & Gas Syndicate?

A. Mr. G. H. Hornby of Belfry, Idaho; Stanley Hodgman of Missoula, Montana, and myself.

Q. What, if anything, occurred to Mr. Hornby after the action was brought?

A. Mr. Hornby died shortly after the action was started.

Q. And as I recall Mr. Larson was substituted as party plaintiff in this action as a trustee?

A. His position, Mr. Hornby's position on the

(Testimony of Jean P. Gerlough.)

Board was taken; he was replaced by Roy E. Larson of Shelby, Montana. [192]

Q. Since the appointment of Mr. Larson has he and you and Stanley Hodgman continued to be the trustees of that Syndicate? A. We have.

Q. Now with respect to the Potlatch Oil and Refining Company what position have you ever held with that company?

A. I was one of the organizers of the corporation in 1922, I believe it was.

Q. Well, by the organizers do I understand you to be one of the incorporators?

A. One of the incorporators, yes, and stockholder.

Q. What relation did you thereafter sustain to the corporation Potlatch Oil and Refining Company?

A. I was a stockholder all the time, and in 1928 I became a director of the corporation.

Q. Prior to 1928 had you ever been a director of the corporation?

A. I was at the inception of it, yes; at the very beginning, yes, I was a director.

Q. And thereafter you were replaced as a director by some other person? A. Yes.

Q. Who were the other directors of that corporation at that time?

A. Mr. T. P. Jones, K. G. Luke—do you mean, Mr. McCabe in the organization?

Q. Yes, after it was first organized? [193]

A. After it was first organized?

(Testimony of Jean P. Gerlough.)

Q. Yes.

Mr. Everett: May I object to this line of questioning as not the best evidence. Mr. McCabe, I would think the characters and incorporation papers and so forth would be the best.

Mr. McCabe: Of course, the minutes of the meetings would show that, but as I understand that an officer can testify who were officers acting within the corporation. However, I will let the Court rule on the question.

The Court: I think he can testify and you can call for them on cross-examination, I suppose, if you want them to produce them relative to the organizations.

Q. Who were the incorporators of the Potlatch Oil and Refining Company besides yourself?

A. T. P. Jones, K. G. Luke, A. W. Laird, and there was a fifth one I don't recall offhand.

Q. You don't recall, well, we will take care of that later. What other relations have you sustained to Potlatch Oil & Refining Company since its incorporation?

A. I have been a stockholder since the beginning and I have been a director since 1928; I have been Secretary-Treasurer and Manager since 1931.

Q. About what time of the year 1931, approximately?

A. I believe it was April. I couldn't be too sure. [194]

Q. That is your recollection? A. Yes.

Q. With respect to Inland Empire Oil & Gas

(Testimony of Jean P. Gerlough.)

Syndicate have you at any time been interested in it as the owner of certificates of beneficial interests? A. Yes, I have been.

Q. Are you still an owner of certificates of beneficial interests in that Syndicate?

A. I have held stock interest in it from the beginning.

Q. And with respect to Potlatch Oil and Refining Company with reference to holding stock in that company do you hold stock in that company?

A. I also have held stock in that company from the beginning.

Q. And you are still the owner of those certificates and stock? A. That is correct.

Q. Mr. Gerlough, as a trustee of Inland Empire Oil and Gas Syndicate are you able to say who has possession of the records of that Syndicate at the present time? A. I do.

Q. And I believe you stated you also occupied the position of secretary of the Syndicate, is that correct? A. That is correct.

Q. You have been requested by me pursuant to notice to produce—in this case—to produce all of the statements that were rendered by The Ohio Oil Company to the Inland Empire Oil & Gas Syndicate and the Potlatch Oil and Refining Company from the inception of their interests in the agreement, [195] operating agreement which has been admitted by the pleadings to have been entered into. You recall me notifying you I had received this notice to produce? A. Yes.

(Testimony of Jean P. Gerlough.)

Q. Have you produced all those records?

A. I have produced all of the records.

Q. And did I request you to produce then other similar statements that were delivered to the Troy-Sweet Grass Oil Syndicate by the Ohio Oil Company under its operations under the agreement involved in this action? A. Yes.

Q. And have you so produced them?

A. I have.

Q. And did I also request you to produce certain transmittal vouchers which had been requested to be produced by the plaintiffs which accompanied checks from The Ohio Oil Company, did I notify you to produce them? A. Yes, you did.

Q. And did you produce all of those transmittal vouchers which either the Syndicate, plaintiff Syndicate or the plaintiff corporation has?

A. I produced all of them that were available; some had been lost.

Q. Now will you please examine these containers and examine the statement appearing thereon, the white sheet attached to the containers, and state what the records are that are in that container?

A. These are the statements rendered by The Ohio Oil [196] Company to Inland Empire Oil and Gas Syndicate from August, 1922, up until January 31, 1943.

Mr. Everett: Did I understand you to say August 22?

(Testimony of Jean P. Gerlough.)

A. August, 1922. Dated August 31st, 1922, until January 31st, 1943.

Q. And for the purpose of the identification of this container I have marked it here Plaintiffs' Exhibit No. 1. Now please examine this other container which I show to you and upon which appears the typewriting and state whether or not you know what that container contains. Just answer yes or no.

A. Yes, I recognize the container and the statements.

Q. And what does that container contain?

A. This contains the statements from The Ohio Oil Company, statements made to the Potlatch Oil and Refining Company from July 23 to January, 1943.

Q. And for the purpose of identification I am marking this last mentioned container Plaintiffs' Exhibit No. 2. You observe that that container is so marked? A. Yes.

Q. Do these statements contain in the containers marked Plaintiffs' Exhibits 1 and 2, contain all of the statements which to your knowledge which were furnished by The Ohio Oil Company pertaining to operations under the oil and gas leases known as the I. H. Baker or I. Baker lease [197] and I. Sinton lease?

A. These statements in the two boxes here contain all, are all the statements rendered by The Ohio Oil Company to the Inland Empire Oil and Gas Syndicate and the Potlatch Oil and Refining Company.

(Testimony of Jean P. Gerlough.)

Q. Included in these statements which you have just identified and attached and made a part thereof are there some statements or some entries pertaining to operations of this contract, contracts between The Ohio Oil Company and the Potlatch and Inland, respectively? A. Yes, there are.

Mr. Everett: Would you read that last question back?

(Question read.)

Mr. Everett: I don't know whether the witness understands the question; I didn't.

Q. Now, did you understand my question?

A. Yes, there are some statements in there of accounts under the B. Sinton lease and the Oliver O'Hannon lease which are under a separate contract.

Q. And were they fastened together with the other statements which you heretofore testified to?

A. Yes, they are.

Q. And you haven't separated those?

A. Some of them I haven't separated. I separated most of them. [198]

Q. Well those that were loose and not bound?

A. Those that were loose and not bound together and clipped together I separated, yes.

Q. Now, showing you this container containing, with the typewriting on white paper stamped on there, do you know what that container contains?

A. Yes.

Q. Now, what does that container contain?

(Testimony of Jean P. Gerlough.)

A. This container contains all the statements rendered by The Ohio Oil Company to the Potlatch Oil and Refining Company covering the operation of the B. Sinton lease and the O'Hannon lease with the exception of those which couldn't be separated from the other statements.

Q. Now, I will mark that container for identification purposes Plaintiffs' Exhibit 3. Now do you see that identification? A. Yes.

Q. And that container marked Plaintiffs' Exhibit 3 contains the statements concerning which you have just testified? A. Yes.

Q. I show you a white cardboard box with a typewritten statement appearing thereon, do you know what that container contains?

A. Yes, I do.

Q. And what does that container contain?

A. This container contains all the statements rendered by The Ohio Oil Company to the Troy-Sweet Grass Oil Syndicate.

Q. Under its operations under the contract involved in [199] this action?

A. That is right.

Q. Now, I am marking for identification purposes Plaintiffs' Exhibit 4. Now does that Plaintiffs' Exhibit 4 contain the statements to the Troy-Sweet Grass Oil Syndicate from The Ohio Oil Company concerning which you have just testified? A. That is right.

Mr. Everett: I want to suggest to counsel here that he has marked these exhibits for identifica-

(Testimony of Jean P. Gerlough.)

tion 1, 2, 3 and 4, Plaintiffs' Exhibits 1, 2, 3, and 4, and I believe the record shows in connection with the depositions and so forth you already have those same exhibits to other exhibits.

Mr. McCabe: I thought we identified those by initial. Well, we will change these to recite as the identification number on these respective containers Plaintiffs' Exhibit No. A, that is for the statements rendered to the Inland Empire Oil and Gas Syndicate, concerning which you have testified; Plaintiffs' Exhibit B to identify the containers in which you have testified contains all of the statements rendered to the Potlatch Oil and Refining Company by the defendant company; and Plaintiffs' Exhibit C, instead of Plaintiffs' Exhibit 3, we will change that and mark that Plaintiffs' Exhibit C for identification purposes as containing the statements rendered to Potlatch Oil and Refining Company by The Ohio Oil Company embracing the lands in the [200] B. Sinton and O'Hannon oil and gas leases.

A. Correct.

Q. And with respect to the exhibit which we have marked for identification as Plaintiffs' Exhibit No. 4, concerning which you have testified, I am changing that exhibit to Plaintiffs' Exhibit No. D, and you heretofore identified a container with respect to transmittal vouchers accompanying checks issued by The Ohio Oil Company to the Potlatch Oil and Refining Company and Inland Empire Oil and Gas Syndicate, and I hand you

(Testimony of Jean P. Gerlough.)

this container which bears no exhibit mark or identification mark. I am going to mark that Plaintiffs' Exhibit E for identification. Now you observe that that exhibit containing the transmittal vouchers I mentioned is now marked Plaintiffs' Exhibit E for identification? A. Yes.

Mr. McCabe: I now offer in evidence these monthly statements contained in containers marked Plaintiffs' Exhibits A, B, C, D, and E, respectively, conformable to the notice and demand to produce in open court served upon the defendant.

Mr. Everett: We have no objection to the receipt of those in evidence. We would, however, like an opportunity to check them, Mr. McCabe.

The Court: You want to examine them?

Mr. Everett: Yes.

The Court: Very well, we will suspend here. Court [201] will stand in recess until two o'clock this afternoon.

(11:50 o'clock a.m.)

(Court resumed, pursuant to recess, at 2:00 o'clock p.m. on December 22, 1949, at which time all counsel were present.)

The Court: Proceed.

JEAN P. GERLOUGH

resumed the stand and testified as follows:

Direct Examination

(Continued)

By Mr. McCabe:

Q. Mr. Gerlough, are you familiar or did you ever read the operating agreement, the original operating agreement involved in this action?

A. Yes, I have.

Q. And were you present or did you have any part in the negotiations which lead up or which resulted in the making of the operating agreement between the Troy-Sweet Grass Syndicate and The Ohio Oil Company, a copy of which is attached to the complaint of the plaintiffs herein?

A. I had no part in the actual negotiations.

Q. After the contract was signed did you have the contract exhibited to you?

A. Yes, I did.

Q. And did you read same? A. Yes, I did.

Q. Now, after the Ohio Oil Company's statements started [202] to come in against the Inland Empire Oil and Gas Syndicate did you ever in your capacity as trustee discuss with persons purporting to be connected with The Ohio Oil Company objections which you, the Syndicate, felt were proper against charges being made in these statements? A. Yes.

Mr. Everett: We object to that question, your Honor, as wholly incompetent, irrelevant and im-

(Testimony of Jean P. Gerlough.)

material whether he discussed it with anyone; the contract he refers to has not been introduced in evidence.

Mr. McCabe: This testimony is to show the making of objections to these.

The Court: The question here is very general, so generally that we can hardly apply it to any specific thing talking generally or discussing it with somebody generally. I don't know whether it is proper or not. I will let you go a little further. Who did you talk to, what were you talking about and what was the idea of the conversation?

Q. (By Mr. McCabe): Well, are you acquainted with L. J. Yealy? A. Yes, I am.

Q. And with Virgil McCracken?

A. Yes, I am.

Q. Did you ever have any conversations in your capacity as trustee with either of these gentlemen or both of them in connection with charges appearing against the Inland Empire Oil and Gas Syndicate in the statements which were being [203] furnished monthly by The Ohio Oil Company?

A. Yes, I did.

Mr. Everett: It is wholly irrelevant and immaterial whether he had any conversations with Mr. Yealy or Mr. McCracken or anybody else.

The Court: Who are they? Who are Mr. Yealy and Mr. McCracken?

Mr. McCabe: It has been admitted in evidence that they are connected, employees of The Ohio

(Testimony of Jean P. Gerlough.)

Oil Company by stipulation that has been entered in the respective capacities.

Mr. Everett: Let's see the stipulation, Mr. McCabe, you refer to.

Mr. McCabe: It is in answer to those interrogatories which I submitted.

Mr. Everett: The stipulation he refers to, your Honor, is a stipulation dated October 21, 1949, in which it is stipulated that Mr. Yealy was a General Superintendent, Shelby, Montana, and Mr. McCracken was Cashier of the Shelby office. Mr. Yealy from September, 1922, to March, 1938, and McCracken from January 1st, 1923, to December 9th, 1936. And not laying proper foundation for the question or the testimony even under this stipulation in that he has shown no place that Mr. Yealy or Mr. McCracken had an official position sufficient to bind the company by anything they might have said and we think our objection is good on that ground. [204]

Mr. McCabe: Well, if the Court please, the purpose of this was to show these were the only two agents of The Ohio Oil Company in that area.

The Court: Have you shown that?

Mr. McCabe: I will. I just got out of order, your Honor. I will lay the foundation.

Q. Mr. Gerlough, who were the persons representing The Ohio Oil Company in the area of the lands embraced in the Troy-Sweet Grass Oil Syndicate-Ohio Oil Company operating agreement of July, 1922, or June 15th, 1922?

(Testimony of Jean P. Gerlough.)

Mr. Everett: We object to the question; it calls for a conclusion of the witness; not shown they were executive officers of the company in any event.

Mr. McCabe: The purpose of that is they were purporting to act.

The Court: Well, he has had dealings with them and had conversation with them and been in the office, he knows them. I will let him answer how he dealt with them as General Manager or Cashier or if he knew them as such; they weren't complete strangers to him.

Q. Mr. Gerlough, do you know whether L. J. Yealy was representing The Ohio Oil Company in any capacity in the area of the lands involved in the operating agreement involved in this action?

A. Yes, he was.

Q. And who else—do you know whether Virgil McCracken [205] was representing The Ohio Oil Company in any capacity in that same area?

A. Yes, he was. Mr. Yealy was General Superintendent for The Ohio Oil Company and Mr. McCracken was The Ohio Oil Company Cashier in the Shelby office.

Q. Now, do you know whether these persons were actively in charge of the operations of The Ohio Oil Company in that area at the time?

A. Mr. Yealy was in charge of the field operations, I know that. I don't know what Mr. McCracken's capacity was so far as being official; he was a Cashier in the office there.

Q. Well, were these two men the only men in

(Testimony of Jean P. Gerlough.)

charge of the affairs of The Ohio Oil Company in that area at the time?

Mr. Everett: We object to that question.

Mr. McCabe: I will lay the foundation.

The Court: Yes.

Q. Do you know, Mr. Gerlough, whether these two gentlemen, Mr. Yealy and Mr. McCracken, were or were not the only persons representing The Ohio Oil Company's operations in that area?

Mr. Everett: We object to the question again. I don't know what the purpose is of what you are trying to bring out here, counsel, and I wouldn't attempt to tell you how to do it if it could be [206] done.

The Court: Well, you can ask him if he knows of any other officers in charge or operating there. It is hardly possible he would know whether some other officer of The Ohio Oil Company was in charge and really had authority over these two men you just referred to. I don't see how he could know that.

Q. Do you know, Mr. Gerlough, whether Mr. McCracken and Mr. L. J. Yealy were in charge of the operations of the Ohio Oil Company in that area at the time?

A. I know Mr. Yealy was in charge. As I said, I don't know what Mr. McCracken's official capacity was. They were both residents there and officials of The Ohio Oil Company in Shelby.

Mr. Everett: I object and ask that the answer be stricken as a conclusion that they were officials

(Testimony of Jean P. Gerlough.)

of The Ohio Oil Company; it has not been shown.

The Court: Yes. Well, he dealt with them as such and I will let that part of it stand; whether he knows what officials they were it is another thing. It is hard to establish on the foundation laid for it.

The Court: You dealt with them as officials of the Company?

A. That is right.

The Court: In the capacity in which you just stated?

A. That is right. [207]

The Court: All right, that will stand.

Q. (By Mr. McCabe): Did you then after the statements were being furnished by The Ohio Oil Company as to expenditures under the operating agreement involved in this action to Inland Empire Oil and Gas Syndicate concerning matters of which, matters of proper charges appearing or improper charges appearing in the statements?

Mr. Everett: We object to the statement, your Honor. He has not shown that these men had charge of the accounts or anything with reference to the accounts.

The Court: I will sustain the objection. No need to go any further, I will sustain the objection.

Mr. McCabe: You sustain the objection?

The Court: Yes.

Q. Were there—do you know whether there were any other persons in the area of the lands involved in this contract having charge of operations of The Ohio Oil Company?

(Testimony of Jean P. Gerlough.)

Mr. Everett: I object to that question as being leading.

The Court: Well, I think we have pretty well gone into that point. We are getting right back where we were a few minutes ago, whether he knows whether anybody else had any charge or authority there.

Mr. McCabe: That is not the question I [208] asked, your Honor.

The Court: Ask him if he knows whether any other officer had charge or authority there over these two officers he mentioned.

Q. Were there, or do you know whether there were any officers or agents of The Ohio Oil Company located in the area where these operations of The Ohio Oil Company under the operating agreement involved in this action in that area over Mr. McCracken and Mr. Yealy holding position superior?

Mr. Everett: I object. It calls for a conclusion of the witness whether there were officers and agents.

The Court: I will let him answer.

A. There were no resident agents I know of.

The Court: Do you know? Just answer his question yes or no.

A. No.

Q. (By Mr. McCabe): Do you know or don't you know? A. No.

The Court: He says, no, he doesn't.

Q. (By Mr. McCabe): Well, Mr. Gerlough,

(Testimony of Jean P. Gerlough.)

have you personally examined the statements which are contained in the containers marked Plaintiffs' Exhibits A, B, C, and D? A. Yes, I have.

Q. Did you ever examine these statements item by item? A. Yes, I have. [209]

Q. And from those statements did you draw a summary statement of charges or items which Inland Empire Oil and Gas Syndicate considered improper under the operating agreement?

A. Yes, I did.

Mr. Everett: We object to that, your Honor. It is wholly irrelevant and immaterial what he drew under those statements. They introduced the statements; they speak for themselves. Anything he made from them is wholly immaterial and improper testimony.

The Court: I think I will have to sustain the objection.

Mr. Everett: The Court sustained my objection on that, Mr. McCabe.

Mr. McCabe: Yes, I know.

Q. Mr. Gerlough, besides your connection with the Potlatch Oil and Refining Company and the Inland Empire Oil and Gas Syndicate, do you have any other occupation?

A. Yes, sir, I am a petroleum geologist.

Q. And where have you been residing since 1921, since the year 1921? A. At Shelby, Montana.

Q. Have you ever been engaged in the drilling of oil wells in the area of the lands embraced in the operating agreement in this case?

(Testimony of Jean P. Gerlough.)

A. Yes, I have.

Mr. Everett: We think that question is improper and that the answer should be stricken as wholly irrelevant [210] and immaterial whether he has been engaged in operations.

The Court: He probably is laying a foundation for something more to come. Overrule the objection.

Q. (By Mr. McCabe): What was your answer?

A. Yes, I have.

Q. And how many years' actual experience have you had in drilling and operating oil wells in that area? A. Oh, about 25 years.

Q. Were you ever employed by the Shoshoni Oil Company? A. Yes, I was.

Q. What was your capacity with that company?

A. Field superintendent.

Mr. Everett: What is the purpose of this line of testimony, Mr. McCabe?

Mr. McCabe: These questions and foundation will qualify the witness to testify further, first, to the price of oil in the area at the times when the Ohio Oil Company was operating these properties and making payments to these people to sustain the proposition we were not properly credited with sales or production at the prevailing market price in the area in which the oil wells drilled and operated by the Ohio Oil Company under this operating agreement were located.

Mr. Everett: Well, I would think the whole thing was improper, your Honor, the foundation and the questions [211] that follow. It seems to me

(Testimony of Jean P. Gerlough.)

in the first place that would probably be considered an accounting matter, if there was to be an accounting, and, in the second place, it is wholly irrelevant to any issue in the case, and I can't see the point of taking up our time with a matter of that sort.

The Court: You now have it in the case. You now have that meeting at Shelby back in—when was it, 1925? No—1925, yes. And some of the representatives of the Ohio Oil Company and some of the representatives of these others, the plaintiffs here, with Mr. Freeman, I believe, as attorney, you had a confab there and Mr. Freeman was instructed to come back and submit all your complaints in writing and the Ohio Oil Company were to respond and submit in writing their answers to all of these complaints. Now haven't you got that here, and isn't that in the record so that we know what the prices were and what admissions were made, or the Ohio Oil Company made some admissions about prices and so forth and explained them? Is there anything further you have to go into on that subject?

Mr. McCabe: As I understand the rule in obtaining an accounting we have to show a *prima facie* case of a violation of the agreement. That is not binding on the accounting, the question, whether or not those charges were a violation or not is determined upon the accounting, but we have to show that the defendant as a tenant in common or as trustee or as [212] a joint adventurer was violating

(Testimony of Jean P. Gerlough.)

the contract; we have to at least make a prima facie case of that.

The Court: Don't you have to show time and place and circumstances and what the conditions were? Can you generally inquire as to overcharges without applying them to some time, place and circumstance?

Mr. McCabe: I was just leading up to that, your Honor. He has the record and he is going to testify from the record he made at that time, from his reference setting forth the prices the producer was paid, and setting forth the prices other purchasers were paying for oil in the field, and these other purchasers were paying a higher price from certain producers than the Ohio Oil Company was giving these people as credit, and the Ohio Oil Company was taking all the oil under this agreement, so we are laying the foundation now to show that during the certain period of time that the Ohio already was claimed by the company to have done these things, but they actually were not paying in accordance with the prevailing market prices.

Mr. Everett: We still insist upon our objection.

The Court: I will let him go ahead.

Mr. Everett: The testimony is in here, your Honor, by his own exhibit that at that time or subsequent to that time they received monthly remittances from us with statement of account paid in full. Now how they can open that up and [213] violate all the rules of parol testimony and everything else, I don't know. Here, I turn to some of

(Testimony of Jean P. Gerlough.)

these statements. They run on here—I don't believe—but for example, on July 23rd, 1924, referring to transmittal slip for the Plaintiffs' Exhibit E; it is addressed to Inland Empire Oil & Gas Syndicate, No. 1264, The Ohio Oil Company, Findlay, Ohio, July 23rd, 1924, in full settlement for the amount due you for the net earnings of your part interest holdings as per our bill W-3927, dated June 30th, 1924. Then we will turn to another one; they are all about the same. We come down here and showing payment of \$786.48. Then we come down to March——

The Court: In full settlement?

Mr. Everett: Yes, sir. Then we come to March 30th, 1926, and to another one of the transmittal slips, which accompany the check for the payment, as he has already testified, addressed to Inland Empire Oil and Gas Syndicate, Shelby, Montana, dated March 30, 1926, and states: "In full settlement of our bill W-211-26, in the amount of \$1,265.01." I am just picking these out at random. There is every month—about the only difference is some say in full settlement and some say in payment of our bill and so and so, and all giving the amounts. Down to January 23rd, 1932, another transmittal slip, addressed to Inland Empire Oil and Gas Company, Shelby, Montana. The Ohio Oil Company, Findlay, Ohio, January 23rd, 1932, in payment of our credit bill No. W-21-32, dated [214] December 31st, 1931, \$1,060.36. And all of them are preceded by the printed statement, the ones I have read were typed

(Testimony of Jean P. Gerlough.)

on, and the printed statement "For payment of following items," "No receipt required." That is printed on each one of these.

Mr. McCabe: Taking those statements by themselves, your Honor, and the statements speak for themselves, it would appear that was a settlement, but the evidence already introduced by these depositions shows that there was objections made to the correctness of these bills and the company promised to correct them and rectify the mistakes, and the record will show in many cases all through these statements the company made credits and corrections on the statements, thereby showing that they never intended these payments as being final settlement and final payments of the respective bills. In other words, the question of accounts stated. That is, evidence is of accounts stated.

The Court: Now go ahead under counsel's objection and get out what you want from him and we will see when we get all the case in under counsel's objections. You are making a record of that and we will pass on it later.

Mr. McCabe: The purpose of this line of examination——

The Court: Get down and do it as quick as you can.

Mr. McCabe: If it please the court, the time, place and circumstances and what he has to say about the price; what he has to say about the price being in excess, a violation of [215] the contract?

(Testimony of Jean P. Gerlough.)

The Court: If you think you can show that by this witness.

Mr. McCabe: Yes.

Q. (By Mr. McCabe): Mr. Gerlough, as a trustee or did you ever during the years that you were acting and operating for oil and gas in the area where these lands are located keep in touch with the market prices being paid by producers of oil in that area? A. I did.

Q. Now during the years 1924 to and including the years, all of the years of 1928, were you familiar and did you determine what prices were being paid by the various purchasers of oil in the area where the lands involved in this action and in the operating agreement were located? A. Yes, I did.

Mr. Everett: May it please the Court, our objections go to all of this?

The Court: Oh, yes, certainly.

Q. (By Mr. McCabe): What was your answer?

A. Yes, I did.

Q. And during that time did you keep a record of the prices that were being paid by The Ohio Oil Company to the Inland Empire Oil & Gas Syndicate and to the Potlatch Oil and Refining Company for purchases of crude oil being made by them?

A. Yes, I did. [216]

Q. And did you also during that time keep the record of the prices that were being paid by other purchasers of oil in that area during that same period of time? A. Yes, I did.

Q. Are you able to state at this time what prices

(Testimony of Jean P. Gerlough.)

were being paid by The Ohio Oil Company to the Potlatch Oil and Refining Company and to the Inland Empire Oil and Gas Syndicate and also what prices were being paid by other purchasers of oil in the area? A. Yes, I can.

Q. During the same period of time?

A. Yes, I can. I have a memorandum if you will allow me to consult it.

Mr. Everett: Can I ask him a question just a minute?

Q. (By Mr. Everett): Are you familiar with the signature of Mr. T. P. Jones?

A. Yes, I am.

Q. J. A. Harsh? A. Yes.

Mr. Everett: Referring to a division order dated August 3rd, 1923, addressed to The Ohio Oil Company, signed Troy Sweet Grass Oil Syndicate, by T. P. Jones, President, and signed Potlatch Oil and Refining Company, by T. P. Jones, President, by J. A. Harsh, Secretary and Treasurer. I call the Court's attention that this division order provides: First: That the oil run in pursuance of this division order [217] shall be paid for to the well owners or their assigns in proportion to their respective interests shown above, at the market price paid by The Ohio Oil Company for the same kind and quality of oil on the date of its receipt." I ask you to mark this as Defendant's Exhibit 1 and introduce the same in evidence in connection with the cross-examination of this witness. (Defendant's Exhibit K.)

Mr. McCabe: Of course, we object on the grounds this exhibit——

(Testimony of Jean P. Gerlough.)

The Court: How long does that division order continue? That is in 1923 and the matters submitted here or to be submitted by this witness would run from 1924 to 1928. Would that order be in force in 1924?

Mr. Everett: This order is in force for whatever periods of time The Ohio Oil Company is running oil from the lease.

Mr. McCabe: That is a matter of evidence in defense.

Mr. Everett: Your statements show we were running oil for you and accounting for oil produced and sold up to the time we sold the lease.

Mr. McCabe: Well, that doesn't show that in the agreement.

The Court: No, it doesn't show it in your objection.

Mr. McCabe: I object on the ground it is not within the issues and cross-examination. [218]

The Court: Within the period of time this witness is being questioned, 1924 to 1928?

Mr. Everett: This order was given in 1923, your Honor, and it has never been revoked.

Mr. McCabe: Well, that is a matter of evidence.

Mr. Everett: You prove it was revoked, Mr. McCabe, and you can't.

The Court: Suppose you hold that until you come to your part of the case; then you can show what the import of the order is.

Mr. Everett: I would like to make the further

(Testimony of Jean P. Gerlough.)

objection this testimony is improper as violating the parol evidence rule.

The Court: If it is, you have an objection to all this line of testimony and the Court is receiving it to see what he has got.

Q. (By Mr. McCabe): Now, have you such a record with you? A. Yes, I have.

Q. Will you please produce it? Have you the record with you? A. Yes, I have.

Q. Now, when this record that you have there was made, were these facts fresh in your memory?

A. Yes, they were.

Q. And does that record correctly and truthfully set forth the prices of oil being paid by The Ohio Oil Company [219] to the Potlatch Oil and Refining Company and the Inland Empire Oil and Gas Syndicate and the prices being paid by other purchasers of oil in that area during the period of time which the record purports to cover and which you have testified to? A. Yes, it does.

Mr. Everett: May the Court please, I don't like to interrupt, but if he would quit asking leading questions and let the witness testify, it would facilitate this matter. It calls for a conclusion of the witness. He laid no foundation where these prices were taken from and what from, and here is the evidence showing the prices.

The Court: I will sustain the objection. It is leading, all right. You will have to put it a little differently in order to prove these continued in force, otherwise——

(Testimony of Jean P. Gerlough.)

Mr. McCabe: Your Honor, I started out to show this——

The Court: Go on, sit down, and ask the questions. Don't just ask leading questions.

Mr. McCabe: This last question is permissible to the witness?

Mr. Everett: He sustained my objection to it, Mr. McCabe.

The Court: You could reframe your question.

Q. By use of your record are you able to refresh your [220] memory as to the prices of oil during the period which you have testified concerning? A. Yes, I can.

Q. Now, please refresh your memory from that record and just tell us during the periods of time from 1924 to 1928 the prices which were being paid by The Ohio Oil Company to the Inland Empire Oil and Gas Syndicate and to the Potlatch Oil and Refining Company and the prices which were being paid by other purchasers in the same area?

Mr. Everett: Let's take them one at a time.

Mr. McCabe: All right.

Q. Are you able from that record to refresh your recollection and testify as to the prices being paid to the Potlatch Oil and Refining Company during the period of time which you said you kept the record? A. Yes.

Q. And from that record are you able to testify from refreshing your recollection with it as to the price that was paid during the time set forth in the

(Testimony of Jean P. Gerlough.)

record of which it purports to be a record being paid to the Potlatch Oil and Refining Company?

A. Yes.

Q. Does that record also, or refreshing your recollection are you able to testify from that record as to what price the purchasers of oil in that area were generally paying on the market for oil to producers of the oil? A. Yes.

Mr. Everett: No proper foundation has been laid [221] for any of this, your Honor. It is not the best evidence what is paid in the area and what lease it was from, and it just isn't tied down. I am really sorry I have to object, but I am going to try this case.

The Court: He hasn't tied in the testimony. It is just a general floating proposition. You have to get down to some concrete facts somewhere. They paid a certain amount and then compare the price with what the defendant paid that same time and the same quality of oil.

Mr. McCabe: I was going to get up to that.

The Court: You have a lot of ground to cover. His objection is good at the present moment.

Q. Refreshing your recollection, please state what price was being paid by The Ohio Oil Company to the Baker company during the various periods between 1924 and 1928 concerning which you said you were familiar with the prices being paid for oil?

A. Yes. From the end of July, 1924, until the 23rd of January, 1925, The Ohio Oil Company was

(Testimony of Jean P. Gerlough.)

paying 90 cents a barrel for crude oil run from leases under this contract in dispute. The International Refining Company during the same period was paying \$1.02½ a barrel.

Mr. Everett: Would the witness also state the quantities or what was involved in that computation?

A. I have them down here. [222]

Mr. Everett: While he is looking it up, I understand our objections go to all of this, of course?

The Court: Yes.

A. These are all here for months, Mr. Everett. From July 18 to July 27th, 2,061.42 sold International Refining Company. They paid \$2,112.96. From July 29th through August 7th, 790.63 barrels, paid \$810.40.

Q. Would you state the price per barrel?

A. The price per barrel all through here is \$1.02½. From August 17th, 613.66 barrels, paid \$629.01.

Mr. Everett: Who paid?

A. International Refining Company paid Shoshoni Oil Company. From August 18th through August 19th, 720.16, paid \$738.17.

Q. (By Mr. McCabe): How much a barrel?

A. \$1.02½ a barrel. From August 20th through August 31st, 12,703.08 barrels, paid \$13,020.66.

Q. How much a barrel?

A. \$1.02½ a barrel. From September 1st, 1924, to September 15, 1924, 16,156.01, at \$1.02½ a barrel, paid——

(Testimony of Jean P. Gerlough.)

Q. What price?

A. \$1.02 $\frac{1}{2}$. Paid \$16,559.92. September 16th, 1924, through September 30th, 1924, 14,186.72, at \$1.02 $\frac{1}{2}$, paid \$14,541.39. October 1st, 1924, through October 15th, 1924, [223] \$9,973.10, at \$1.02 $\frac{1}{2}$ a barrel, paid \$10,222.45.

Q. These figures are all figures paid by the International Refinery; is that right?

A. Paid by International Refining Company to the Potlatch Oil Company for oil run through the Illinois Pipe Line to the International Refining Company.

Q. I am going to ask you, was all this Baker oil from lands embraced in this operating agreement put through the Illinois Pipe Line?

A. Yes, it was. From October 16th, 1924, to October 31st, 1924, 7,702.51, at \$1.02 $\frac{1}{2}$, paid \$7,895.07.

Q. What price per barrel?

A. \$1.02 $\frac{1}{2}$ per barrel.

Mr. Everett: Could I interrupt? Do you have the total production?

A. No, I haven't.

Mr. Everett: From the field at that time?

A. Total production in the field?

Mr. Everett: Total produced and sold from the field during these periods?

A. No, I don't have the total.

November 1st, 1924, through November 15th, 1924, 4,430.68 at \$1.02 $\frac{1}{2}$, \$4,541.44.

(Testimony of Jean P. Gerlough.)

Q. (By Mr. McCabe): I wish you would please state how much a barrel. [224]

A. \$1.02½ a barrel. November 26, 1944, through November 30, 1944, at \$1.02 a barrel, 8,521.79, brought \$8,736.88. December 1st, 1924, to December 15th, 1924, 6,279.20, at \$1.02½ a barrel, brought \$6,436.18. December 16th, 1924, until December 31, 1934, at \$1.02, 3,464.37 barrels, brought \$3,550.97. January 2nd, 1925, until January 15th, 1924, 6,561.77, at \$1.02½ a barrel, brought \$6,726.82.

The Court: Are you going on with these figures into 1928?

Mr. McCabe: If your Honor please,—

The Court: Are you going to string this along until 1928; are you?

Mr. McCabe: The price varied.

The Court: May we have an understanding that you submit this and go into the record with his testimony under objection of counsel and not have him reading it through here? It will take an hour to get through this.

Mr. McCabe: Well, we could get finished shortly by having him testify during what period of time International was paying so much a barrel for crude oil of a certain character and quality as that produced from the Baker lease or under the contract and during the periods of time what the Ohio Oil were paying to the Potlatch and Inland.

Mr. Everett: I think we could shorten it, your Honor, if counsel wants to let me take the witness on [225] cross-examination for a few minutes. I

(Testimony of Jean P. Gerlough.)

think I can show this is wholly irrelevant and immaterial what that business is. He is quoting the quantity of oil sold. There is no testimony the quality is the same or what the total production from the field is. Mr. McCabe's testimony is we did not account at the prevailing market price, and I think we can show from this witness they had a special contract which was a special consideration moving between the Shoshoni Oil Company, which maybe had 100 barrels a day production, and the International Refining, and they made special contracts with others and their contracts called for a price of ten cents above the price posted in the field by The Ohio Oil Company.

The Court: That isn't the going price in the field at all?

Mr. Everett: No, the going price is the prevailing price in the contract at which we could——

Mr. McCabe: I will show this price was paid not only to Shoshoni Oil Company, but all others.

The Court: Go on and get through as soon as you can.

The Witness: You want me to read all these?

Mr. McCabe: How did you say you would be willing to have this testimony go in under?

Mr. Everett: I won't stipulate on it, Mr. McCabe. I am not trying to make a case for you; I do not think you have one. [226]

Mr. McCabe: I am not asking you to make a case for me. I have my own case.

Q. (By Mr. McCabe): Go ahead and read it.

(Testimony of Jean P. Gerlough.)

A. From January 16th to January 23, 3,345.19, at 1.02½, \$3,428.81.

The Court: I understand this is all International Refining Company's purchases?

Mr. McCabe: This is all to the International Refining.

The Court: Everything he reads is International Refining Company purchases?

Mr. McCabe: Yes.

The Court: All right.

A. January 23rd to January 31st, 2,598.35, at 1.17½, \$3,053.06. On January 31st, 400 barrels, \$1.24½, \$498.00.

Q. And the same price, 1.17½?

A. \$1.24½. The price is changing every few days here. From January 31st to February 13th, or 15th.

Mr. Everett: Could I interrupt, your Honor, to try to save some time? Do you have the contract with the Shoshoni Oil Company and the International Refining?

A. I don't have it here, no.

Mr. Everett: Where is the contract? Is it available to you, sir? [227]

A. I am not so sure. I have my figures here but I am not sure I have it here.

Q. (By Mr. Everett): Do you know of your own knowledge whether it states that Shoshoni Oil Company, for example, is to receive a premium of ten cents a barrel above the prevailing market price?

A. I don't recall whether it did or not, Mr.

(Testimony of Jean P. Gerlough.)

Everett. I got these here, the prices being paid to all the operators in the Shoshoni pool at the time, not only Shoshoni but other operators by International Refining Company.

Q. Do you know of your own knowledge those sales to the International Refining Company were ten cents above the posted field price posted by the Ohio Company?

A. The prices paid varied according to the prices paid by the Ohio Oil Company, but up to this time you can see it is $12\frac{1}{2}$ above the price posted by the Ohio Oil Company, and it continued that way until September 8th, 1926, when after that time the price was 10 cents above the price posted by the Ohio Oil Company.

Q. Well, as a matter of fact the Ohio posted the field price?

A. They posted there on the field price.

Q. What was that posted price; meaning the price they [228] were willing to pay for oil they purchased?

A. That is the price they pay for oil they produced and they purchased but other purchasers had a price of their own.

Q. What other purchasers were there?

A. International Refining Company at Sunburst, and the Montana Giant at Kevin.

Q. And what were their total sales from the field both to the Ohio and International and the other company you mentioned?

A. Those figures I found here.

(Testimony of Jean P. Gerlough.)

Q. Do you have any idea what the total production was from the field during these periods? What is your basic recollection, was it 25,000 barrels a day?

A. I hardly think it was quite that because in 1926 when the east pool was brought in, the highest production we had in the field was 34,000 barrels a day. I would say offhand perhaps 20,000 barrels.

Q. During what period?

A. The period we are talking about now.

Q. The period 1924-1926? A. Yes.

Q. And the total sales to others than the Ohio Oil Company, what would be your testimony with reference to that? You testified with reference to the ones of International Refining Company giving them by periods in barrels [229] speaking comparatively how would that compare with the total oil sold in the field?

A. You mean the oil produced from the Shoshoni Oil Company?

Q. No, the oil purchased by International Oil Company in the field as compared with oil purchased by the Ohio Oil Company in the field?

A. I would say the International was purchasing just as much oil or maybe more than the Ohio Oil Company at that time.

Q. What was the last figure there you read for that period?

Mr. McCabe: Your Honor, I object to counsel coming in and interfering with the presentation

(Testimony of Jean P. Gerlough.)

of this case. Now he is going in to matters of cross-examination and I ask I be permitted to show.

The Court: Yes, he found a way of shortening it and you are getting along as lawyers often do.

Mr. McCabe: If he can shorten it, okay.

Mr. Everett: I still think I could shorten it but I don't want to interfere with his case.

The Court: I tried to shorten it but I evidently couldn't do it.

The Witness: February 1st to February 15th, 4,485.68, and variable prices. It varied from price of \$1.321½ a [230] barrel, \$5,648.01.

Q. (By Mr. McCabe): What was that price?

A. The price was changing. It was \$1.321½ a barrel at the end of that period. This is a split period. The price just prior to that was \$1.241½ a barrel. At the end of the period it was \$1.321½ a barrel. The price was changing every few days at that time. February 16th to February 28th, 3,901.60 barrels at, partly at \$1.321½, 5,169.62. From March 1st through March 6th, 1,985.04, 1.321½, \$2,630.17. March 7th through March 15th, 1.521½, 2,571.03 brought \$3,920.82. March 17th to March 31st, 4,189.51, at \$1.521½, \$6,389.00.

The Court: You know, it seems to me we are going into something here, if this isn't part of an accounting that would have to be made up hereafter after we reached the accounting stage. It seems to me you are doing an accounting right now.

Mr. McCabe: Well, I thought we could shorten it up but Mr. Everett objected to it by specifying.

(Testimony of Jean P. Gerlough.)

The Court: If you are going to follow this up, we are in an accounting right here, a thing we said we wouldn't do until we passed on all these other questions.

Mr. McCabe: That is all right, your Honor, I will confine my examination along those lines. [231]

The Court: Well, we will do that. This is something that belongs to an accounting. So proceed along another line and let's see where we get. I want to see some of these questions out of the way and then we will know whether we are ever going to have an accounting or not.

Q. (By Mr. McCabe): Mr. Gerlough, in the statements concerning which you testified this morning and contained in Plaintiffs' Exhibits Nos. A, B, C and D, do those statements show over the entire period of that time credits that were included and prior debits in the previous months?

A. Yes, they do.

Q. And these credits were given by the Ohio Oil Company in their statements?

A. That is correct.

Q. Mr. Gerlough, it was admitted in the pleadings in this case that the Ohio Oil Company sometime prior to 1943 assigned and sold their interest in the operating agreement involved in this action to the Texas Company. At the time, any time prior to that sale or at the time of the sale or at any time thereafter, did the Ohio Oil Company notify or inform either the Potlatch Oil and Refining Company or the Inland Empire Oil and Gas Syndi-

(Testimony of Jean P. Gerlough.)

cate of its intention to sell or the fact that it had sold? A. It did not.

Mr. Everett: We object to that, your Honor. It is [232] wholly immaterial. He is not laying any foundation for it. What is the purpose of the question? I don't see it myself. There is nothing in here to say we had to ask them or notify them or anything.

Mr. McCabe: The purpose is very clear and the evidence shows throughout here upon depositions admitted that the objections were being made all the times to certain charges and they were promised a final accounting at the termination of the contract or sometime prior thereto. And without giving such final accounting according to this evidence they immediately transferred all of their interest in the property indicating and tending to show that they were attempting to eliminate that final accounting and attempting to eliminate the people, the Troy-Sweet Grass Syndicate and the Potlatch Oil Company and Inland people from knowing that they were making the deal so they could come in and object to such a transfer.

The Court: Well, of course, there isn't anything now that warrants any argument of that kind but the question and answer may stand as it is and subject to your cross-examination.

A. They did not so notify us.

Q. Now on or about the year 1926 or 1927, did the trustees of the Syndicate Oil Company meet?

A. Yes.

(Testimony of Jean P. Gerlough.)

Mr. Everett: We object. If they met, produce the [233] minutes of the meeting, Mr. McCabe. Let's use the best evidence here.

Mr. McCabe: That is the purpose of that will be to show Mr. Jones testified, if your Honor please, that he had a discussion with Mr. McFayden, the General Division Manager of the Ohio Oil Company, concerning the objections on improper charges that had been theretofore taken up in writing with the Ohio Oil Company, and other objections that had been made, and Mr. McFayden promised if he didn't bring suit, then they would have a final accounting on all of these errors, not only the items objected to but any errors in the charges made would be rectified.

The Court: Was that in 1925 when they had the meeting?

Mr. McCabe: 1926 or 1927 after they had this correspondence back and forth between the companies.

The Court: After they had the previous meeting in Shelby in 1925 when Mr. Freeman was interested in it?

Mr. McCabe: Exactly.

Mr. Everett: We further object to counsel's statement. Mr. McFayden has been dead several years and any oral conversation had with him that would tend to vary, alter, modify or contradict the express terms of the written agreement would be clearly inadmissible. And in addition the record shows that Mr. McFayden is dead and any [234]

(Testimony of Jean P. Gerlough.)

conversations had with him as an agent of the Ohio Oil Company are further incompetent under the statutes of Montana and any testimony of this witness with respect to that matter or any minutes of meeting in connection with any verbal conversations are inadmissible.

Mr. McCabe: And for the further reason this evidence is admissible, your Honor. We are charged or the defense in here is made of the statute of limitations and laches. This evidence will go to explain periods of delay why they didn't bring the suit until 1946 or 1947. The complaint was filed under the rule that where a party leads a person to believe that the matter in controversy would be settled later the statute of limitations and laches does not apply; they are estopped to urge those two defenses.

The Court: It seems to me, gentlemen, it is a proposition of law that is good.

Mr. McCabe: It seems to be the law as we found it, your Honor.

The Court: Well, we will let it stand and find out later on whether it is the law or not. I think at the present moment my impression is that is the law with regard to the use of language of a dead person to alter the effect of some written instrument, to vary the terms of it.

Mr. Everett: Would the court like to hear the statement in the Jones deposition to which we already objected? [235]

The Court: We will try to go along as orderly

(Testimony of Jean P. Gerlough.)

as we can and take these things up consecutively. You will get mixed up here.

Mr. Everett: All right.

The Court: You make your record as briefly as you can subject to counsel's objections and we will determine what the law is later on but I think he has given it correctly. That is my recollection.

Mr. McCabe: Read the question

(Question read.)

Q. Now on or about the year 1926 or 1927, did the trustees of the Syndicate Oil Company meet?

A. Yes, they did.

Q. And at that meeting were all the trustees of the Syndicate present? A. Yes, they were.

Q. Did Mr. Jones make any statement to the trustees present relative to having had a conversation with Mr. McFayden, Division Manager of the Ohio Oil Company?

Mr. Everett: We object to that. That is purely hearsay, nothing more or less. It is not the best evidence. The record of the meeting would be the best evidence.

Mr. McCabe: The counsel has stated he pleaded limitation and laches and this goes to explain the reason for the delay that these men, also trustees, were informed by Mr. Jones of this conversation and what Mr. McFayden said at the time. [236]

Mr. Everett: Mr. McFayden is dead.

Mr. McCabe: But this is not within the exclu-

(Testimony of Jean P. Gerlough.)

sion of the statute. If counsel will read the statute, you will find that relates only——

The Court: All right, make your record under objection of counsel.

Mr. McCabe: Read the question.

(Question read.)

Q. Did Mr. Jones make any statement to the trustees present relative to having had a conversation with Mr. McFayden, Division Manager of the Ohio Oil Company? A. Yes, he did.

Q. And what did he say to you substantially was the substance of the conversation he had with Mr. McFayden?

The Court: That is clearly in violation of the hearsay rule.

Mr. Everett: It is in violation of every rule I ever heard of.

Mr. McCabe: Ordinarily that is true, your Honor, but the authorities says where a person receives information from another source based upon a fact in actual existence, your Honor, that is the conversation between Jones and McFayden that the admissibility as reflecting on the question whether the trustees were guilty of negligence or lack of diligence in maintaining the suit, and that is the authorities which we have found on it. [237]

The Court: You can show by this witness under objection of counsel, of course, that some reference was made to this matter without saying what it was and you will have to rely upon Jones' answer.

(Testimony of Jean P. Gerlough.)

Jones has come out and testified as to his conversation with Mr. McFayden. Now all you can prove by him is there was such a conversation. I am not going to let you. I think it is a direct violation of the hearsay rule.

Q. Have you read the deposition of T. P. Jones in this case? A. Yes, I have.

Q. Do you recall in that deposition——

The Court: Make him repeat what the language was and I said you could do it. Ask him if he recalls the conversation in which this matter came up as he observed from the deposition of Jones and then drop it. I am not going to let you go into that conversation.

Q. Do you recall at this meeting seeing the matter of the conversation which Mr. Jones testified in his deposition with Mr. McFayden came up at that meeting? A. Yes.

Mr. Everett: He is asking the same thing again, your Honor. Let's read what Mr. Jones said. It is clearly inadmissible. It is under the deadman's statute. Now how can he get it in here under violation of the statute? [238]

The Court: Inquire whether or not there was a conversation. A. Yes, there was.

The Court: And in this particular meeting?

A. Yes.

The Court: There was a conversation?

A. Yes.

The Court: In which Jones told you something about a conversation with Mr. McFayden?

(Testimony of Jean P. Gerlough.)

A. Yes.

The Court: All right, drop it there.

Mr. McCabe: Through.

Q. (By Mr. McCabe): Mr. Gerlough, has The Ohio Oil Company ever offered to make a final accounting to the Potlatch Oil and Refining Company concerning its operations under the contract?

Mr. Everett: We object to the question, your Honor, irrelevant and immaterial whether we have offered.

The Court: Ask him if he knows whether such an arrangement was made?

Q. Mr. Gerlough, do you know whether or not The Ohio Oil Company has ever at any time since these various objections concerning which Mr. Jones' deposition refers to made any offer of a final accounting and settlement to the Inland Empire Oil and Gas Company? A. No. [239]

Q. Or did they ever make such offer to the Potlatch Oil and Refining Company?

Mr. Everett: Wait a minute, if you will, before you answer these questions, Mr. Gerlough. I am going to object to that question. He is trying now through this type of question to vary the terms of the written agreement which says we render monthly account, monthly statement.

The Court: That is their construction of it. You have a different construction and when you come to your part of the case you can make a different showing along that line. There hasn't been any settlement made. This isn't the final settlement.

(Testimony of Jean P. Gerlough.)

Mr. Everett: I will make the objection there has been no proper predicate laid for this question or this testimony.

The Court: There might be something in that. Go ahead and lay your testimony.

Mr. McCabe: In what respect is the foundation insufficient, if that is the statement?

Mr. Everett: I am not going to tell you, as I told you before, how to try a lawsuit; if you don't know, it is too late in the day for me to try and teach you.

Mr. McCabe: I have asked him and he refused to give the statement to which his objection is directed.

Mr. Everett: All right, if you want it, I [240] will tell you, sir. You have not shown any obligation any place to give any accounting or any kind other than what is shown by the written contract you have and that is in evidence.

Mr. McCabe: Oh, no, the law requires through rule an accounting, Mr. Everett. I will tell you something.

The Court: Now, here, we are not going to have any more of this.

The Witness: What is the question now?

Mr. McCabe: Read the question.

(Question read.)

Q. Or did they ever make such offer to the Potlatch Oil and Refining Company?

A. They did not.

(Testimony of Jean P. Gerlough.)

Q. Mr. Gerlough, on the statements which have been introduced in evidence there are certain expenditures with reference to the Swayzee Camp. Now were any of those buildings or equipment in connection with the Swayzee Camp located upon any of the lands embraced in the operating agreement involved in this action?

Mr. Everett: Wholly irrelevant and immaterial and we object to it.

The Court: Answer the question.

A. They were not.

Q. Now there were some references in these statements to a Sunohio water plant, was any part of the Sunohio water plant's properties or equipment located upon any of the lands [241] embraced in the operating agreement involved here?

Mr. Everett: Same objection.

A. I am not positive. They were not as far as operations were concerned. It is barely possible the line crossed one of these leases.

Q. Now were the buildings, any buildings or machinery connected with the water pumping or water conservation of the Sunohio water camp located on any part of these lands? A. No.

Q. In operating the Swayzee Camp, Mr. Gerlough, do you know whether The Ohio Oil Company made the charges appearing in the statements themselves on a basis of actual expenditures made on the lands embraced in the operating agreement in this case or whether they just lumped it and made a percentage charge against the Inland Empire Oil

(Testimony of Jean P. Gerlough.)

and Gas Syndicate and Potlatch Oil and Refining Company, do you know? A. Yes.

Q. What was their practice with respect to that?

A. They lumped all the charges and then prorated the cost on a percentage basis to the various leases.

Q. And that was done irrespective of any service to the lands involved in the agreement?

Mr. Everett: We object to that as calling for a conclusion.

Mr. McCabe: It is leading but it was saving time. [242]

Q. On these percentage charges were they based on actual service to the lands embraced in this operating agreement? A. They were not.

Mr. Everett: It calls for a conclusion of the witness.

The Court: Yes. Well you will have to split it up I guess and take more time on it.

Q. Well do you know of your own knowledge whether The Ohio Oil Company included expenditures for services of a Swayzee Camp and charged same against the Inland Empire Oil and Gas Syndicate and the Potlatch Oil and Refining Company when as a matter of fact they had not rendered any such services, do you know?

Mr. Everett: I object to the question, to the answer, the statements themselves are the best evidence as to what was included.

Mr. McCabe: The statements don't show that, your Honor.

(Testimony of Jean P. Gerlough.)

The Court: Answer the question.

A. Yes.

The Court: Did you understand it?

A. Yes.

The Court: Answer it. A. Yes.

The Court: All right. [243]

Q. (By Mr. McCabe): Now among the items of the statement that shows Sunburst District expenses now what practice did The Ohio Oil Company make with reference to charging the Inland Empire Oil and Gas Syndicate and the Potlatch Oil and Refining Company respectively with respect to those expenses?

Mr. Everett: We object on the same grounds again, your Honor.

The Court: Answer the question if you know.

A. Yes.

Q. And what was their practice in that respect?

A. They divided the cost according to the number of producing wells on their respective leases.

Q. And do you know whether of your own knowledge there were charges made for that service when as a matter of fact there was none of that service or expenditure made in the lands or upon the lands involved in this operating agreement?

Mr. Everett: I object to counsel's question which is based on facts not in evidence.

The Court: Well, do you know? A. Yes.

Q. What is the fact? A. How is that?

Q. What is the fact, did they make such charges and percentage charges of the district expenses

(Testimony of Jean P. Gerlough.)

when in fact there was no district expenses on the lands involved in this [244] action?

A. Yes, they have.

Mr. Everett: Same objection.

Q. And was that their practice generally?

Mr. Everett: Yes.

Q. Now during the year 1922 were you familiar with the location of the lands embraced in the operating agreement involved in this action?

A. Yes.

Q. And were you also acquainted with the lands generally in the area known as the Kevin-Sunburst Oil Field or Kevin-Sunburst Field?

A. Yes, I was.

Q. Do you know whether during the year 1922 there were any producing wells drilled and brought to commercial production in the area of the lands involved in this agreement? A. Yes.

Mr. Everett: It is wholly irrelevant and immaterial.

A. Yes.

Q. What wells were brought in?

A. Sunburst Oil and Gas Company Davey Well No. 1, located in the SE SE SW quarter of Section 34, 36 2 W and was brought into production on or about the 5th of June, 1922.

Q. And with respect to the acreage involved in this agreement where was, how far was this acreage removed approximately from this producing [245] well?

A. It varied all the way from half a mile to two miles.

(Testimony of Jean P. Gerlough.)

Q. And was this land in the general area, the land in the operating agreement in the general area surrounding the producing well?

A. These lands encircled the producing well.

Mr. McCabe: I believe that is all. You may take the witness.

The Court: I think we had better have a recess.

(3:30 p.m.)

(Court resumed, pursuant to recess, at 3:45 o'clock p.m., at which time all counsel were present.)

The Court: Proceed.

JEAN P. GERLOUGH

resumed the stand and testified as follows:

Cross-Examination

By Mr. Everett:

Q. Mr. Gerlough, could you find amongst the statements that were rendered to you by The Ohio the statement for August of 1924?

A. The statement to the Potlatch?

Q. To Potlatch for August of 1924. In the answers of Potlatch Oil and Refining Company to the interrogatories of this defendant it was stated that the credit balances shown [246] of the respective statements were accompanied by a check for those amounts. And it was stated by you as manager and secretary of Potlatch in answer to defendant's interrogatory No. 9 that checks were received and dates

(Testimony of Jean P. Gerlough.)

of the statements varying approximately from 20 to 30 days following the dates of the respective statements in the amounts of respective stated credit balances with the following exceptions, to wit: (a) May 31, 1924, credit balance shown on statement was \$2,721.29, amount of check received \$2,221.29. Then the same statement is made with reference to the statement of June 30th, 1924, and July 31, 1924, showing a difference of \$500.00 between the credit balance on the statement and the amount of the check received. I will hand you from Plaintiffs' Exhibit B the statement of The Ohio Oil Company, dated August 30th, 1924, and ask you if the credit balance of \$500.00 which represents that \$500.00 carried through those three months is shown and included in the check for that month?

A. Yes, there is a credit balance shown here of \$500.00, August 1st, 1924.

Q. Could you tell from looking at the statements for May 31, July 30th and July 31st, whether that is the same \$500.00 as is carried forward in those three preceding statements?

A. There is a credit balance carried forward in each of these three statements of \$500.00. [247]

Q. And is included in the total that was paid in August or with the check that accompanied the August statement?

A. Apparently, yes.

Q. In connection with the Inland Empire Oil and Gas Syndicate will you state whether The Ohio Oil Company has furnished you with statements of

(Testimony of Jean P. Gerlough.)

account under the operating agreement of June 15, 1922? A. They have.

Q. Do you have that original contract of June 15, 1922? A. Yes, we have.

Mr. McCabe: We have a certified copy of it, Mr. Everett. We just can't place that contract. We had it and I have been looking for it but we can't locate it, but I do have a certified copy certified by the county clerk and recorder of Toole County, Montana. I brought that and that is all we can find. If you have a copy of it, I have no objection to your using it.

Mr. Everett: Well I wanted the original agreement, Mr. McCabe.

Mr. McCabe: Do I understand you correctly you are referring to an agreement between the Potlatch Oil and Refining Company and The Ohio Oil Company?

Mr. Everett: I want that one too. I wanted the suit contract is the one I wanted, Mr. McCabe.

Mr. McCabe: You have those original agreements yourself. [248]

Mr. Everett: I wanted to see yours. I don't seem to find the original of mine.

Mr. McCabe: It is admitted by the pleadings, your Honor, the contract was executed and a true and correct copy is attached to the complaint. There is no issue here as to any difference and there is no defense raised there is any difference between the copies of the contract and the original that was made, and we have had no demand made upon us

(Testimony of Jean P. Gerlough.)

for the original contract of June 22, 1922, between the Troy Sweet Grass Company and The Ohio Oil Company. We do have a demand for the other contract.

The Court: All right, you haven't got it. You haven't got the original and you both admitted that Exhibit A attached to the complaint is the contract; is that right?

Mr. Everett: I wanted it for the purpose of convenience in examining the witness.

Q. (By Mr. Everett): When did Ohio first furnish Inland Empire with a statement of account?

A. On August 31st, 1922.

Q. And that is with reference to operations on the Baker, what is called the Baker well, Baker lease.

A. That is right. The Inland has no interest in any of the other leases.

Q. And when did Ohio furnish the last statement of account [249] to Inland?

A. January 31st, 1943.

Q. And did Ohio furnish Inland with a statement of account for each and every month from and after August, 1922?

A. Yes, they did.

Q. And do any of those statements show credit balances?

A. Yes, they do.

Q. And these statements, Plaintiffs' Exhibit A, are all of the original statements furnished to Inland?

A. That is all the statements furnished by The Ohio Oil Company to Inland.

(Testimony of Jean P. Gerlough.)

Q. And that is one for each and every month?

A. That is right.

Q. And each month where a credit balance is shown on those statements was it accompanied by a check?

A. Yes, it was.

Q. And were those checks currently received by Inland?

A. Yes, they were.

Q. With each such statement, and the amounts of the checks correspond to the credit balances?

Mr. McCabe: Your Honor, we object to all this testimony as purely improper cross-examination, and for the further reason that all of this is admitted; it is admitted in the stipulation between us that they furnished statements each month and on such months as showed a credit they sent us a check for those statements, so it seems to me we are [250] going into a lot of matters already admitted in evidence by the stipulation or by the pleadings.

The Court: Yes, I suppose on cross-examination he might be allowed a certain latitude of testing the recollection of the knowledge of the witness.

Mr. McCabe: I withdraw the objection to save time.

Q. Do you have——

Mr. Everett: Do you have, Mr. McCabe, the original operating agreement of June 15, 1922, between Potlatch Oil and Refining Company and The Ohio Oil Company?

Mr. McCabe: I don't have the original but I have a certified copy.

(Testimony of Jean P. Gerlough.)

Mr. Everett: You have a certified copy; may I have it?

Mr. McCabe: Yes. We searched for it and I located a carbon copy and also a certified copy.

Mr. Everett: I have a photostatic copy, your Honor.

Mr. McCabe: I located the original. I thought it was a certified copy but it is the original.

(Whereupon said instrument was marked for identification Defendant's Exhibit "G.")

Q. I hand you an instrument marked Defendant's Exhibit G for identification and ask you to examine it and state what it is?

A. An operating agreement between the Potlatch Oil and [251] Refining Company and The Ohio Oil Company, dated June 15, 1922.

Q. Have you ever seen that contract before?

A. Yes, I have.

Q. You are familiar with the contract in suit and contract of same date of Troy Sweet Grass Syndicate?

A. Yes, I am.

Q. Have you had occasion to compare the two instruments?

A. Yes, I think I have.

Q. Can you state what difference if any there are between the two?

A. My recollection is that the wording of the contract is identical. I have never compared the signatures.

Q. Well is there any difference in the description of the lands covered?

(Testimony of Jean P. Gerlough.)

A. Between this contract and which one?

Q. And the contract in suit, the Troy Sweet Grass contract in suit?

A. I am not sure. They are two operating agreements; two separate agreements.

Q. Well that is the point I am trying to prove; there were two separate agreements and that they are identical except for the description?

A. The description of the lands.

Q. And the names of the parties?

A. That is right. [252]

Mr. Everett: We offer in evidence Defendant's Exhibit G.

Mr. McCabe: I fail to see the materiality or competency of this evidence. It is not admissible under cross-examination and I don't want to bring issues into this case not covered by the pleadings, and the action, this action is based on a contract of June 22nd, 1922, or June 15th, 1922, between Troy Sweet Grass Oil Syndicate and The Ohio Oil Company, and is maintained by an action, and this action is being maintained to obtain an accounting of expenditures and receipts under that contract there and under this contract here. This is an altogether different contract to that involved in this action.

The Court: You are not suing on the other contract?

Mr. McCabe: No, this is an altogether different contract.

The Court: What is the idea?

(Testimony of Jean P. Gerlough.)

Mr. Everett: The purpose is to show that the contracts with these same companies in the same field and made at the same time are identical and that the accounting under all of them have been the same when we come to the question of accounting.

Mr. McCabe: That is clearly immaterial.

Mr. Everett: This is a matter which concerns matters involved in the issue, may be involved in issue [253] which depending upon the court's rulings whether it may or may not be varied by oral testimony when raised it becomes material. Here is an officer of Potlatch testifying to an identical contract made at the time between his company and Ohio, and I think you will find the rule to be under the Montana statutes, Mr. McCabe, that concurrent agreements or agreements between the same parties at the same time or in the same area may be admissible to show a construction of the parties and intention of the parties.

Mr. McCabe: The situation of that statement of Mr. Everett, if your Honor please, is the fact the parties to this contract are not the same parties to the contract involved in this action. Here is a contract between Potlatch Oil and Refining Company and The Ohio Oil Company as primary parties to this. The contract involved in this action is a contract between Troy Sweet Grass and The Ohio Oil Company, involving altogether different land and the action is being maintained by the Potlatch Oil and Refining Company and Inland Empire Oil

(Testimony of Jean P. Gerlough.)

and Gas Syndicate upon the, as assignees or successors in interest of Troy Sweet Grass Company under the first contract. There is no issue raised in here nor is any other contract pleaded in here either by the plaintiff or defendant, and certainly there is nothing in the pleadings to support this contract that now is an exhibit proposed to be offered in evidence. [254]

Mr. Everett: Would you like to hear the statute, your Honor?

The Court: Let's not take up any more time on that. I will admit it under your objection, subject to your objection.

(Whereupon said Defendant's Exhibit "G," offered and received in evidence, subject to objection of plaintiffs' counsel, is a part of this record.)

(Whereupon an instrument was marked for identification as Defendant's proposed Exhibit "H.")

Q. (By Mr. Everett): I hand you Defendant's proposed Exhibit H, and ask you to examine it and state what it is?

A. An operating agreement between Troy Sweet Grass Oil Syndicate and The Ohio Oil Company, dated June 15th, 1922.

Q. Will you compare it with Defendant's Exhibit G and state the differences there are in the two agreements, if any, other than the description and the parties?

(Testimony of Jean P. Gerlough.)

The Court: How many pages? Are you reading it word for word?

A. The wording of the two appears to be identical with the exception of the descriptions and the signatures.

Q. And the proposed Exhibit H is executed by Troy Sweet Grass Oil Syndicate and by T. P. Jones, President, and Kenneth Luke, Secretary?

A. Right. [255]

Q. Do you remember of ever having seen a duplicate of this agreement at any time?

A. Yes, I have.

Q. In the files of what company?

A. Inland Empire Oil and Gas Syndicate.

Mr. McCabe: May I look at it?

Mr. Everett: We offer—Do you have any objection Mr. McCabe, to our substituting a photostatic copy for the original?

Mr. McCabe: Which one?

Mr. Everett: This last one?

Mr. McCabe: No objection as to its being a copy. I have an objection as to——

Mr. Everett: I understand that. Is that satisfactory to the court to substitute this photostat?

Mr. McCabe: To the offered in evidence proposed Exhibit H the plaintiff objects on the grounds it is improper cross-examination. It is incompetent, irrelevant and immaterial for any purpose. It is not within the issues and relates to an entirely different contract, entirely separate and distinct contract not connected in any way with the contract involved

(Testimony of Jean P. Gerlough.)

or the operating agreement involved in this action. And, furthermore, it relates to altogether different land, and for the further reason no place in the pleadings is this contract referred to, and for the further reason no proper foundation has been laid for the introduction of the [256] Plaintiffs' Exhibit H.

The Court: It may be received subject to your objection the same as the other one.

(Whereupon said Defendant's Exhibit H, offered and received in evidence, subject to objection, is a part of this record.)

Q. (By Mr. Everett): What statements are included in this, in plaintiffs' exhibits other than statements covering the Baker and I. Sinton leases?

A. Statements covering operations on the Oliver O'Hannon farm and the B. Sinton farms.

Q. And those lands are described—do you know the description of those lands?

A. The Oliver O'Hannon is the East Half of the West Half and the West Half of the East Half of Section 26, Township 36 North, Range 2 West; and the B. Sinton farm consists of the South Half of Section 1, Township 35 North, Range 2 West.

Q. And those are the lands described in this contract, is that correct, referring to Defendant's Exhibit G? A. That is correct.

Q. And the accounts with reference to operations under this operating agreement were they in the same form or are they in the same form as the

(Testimony of Jean P. Gerlough.)

accounts with reference to the [257] Baker and I. Sinton leases?

A. The statements of accounts?

Q. Yes. A. Were on the same form, yes.

Q. Cover the same general headings and subject matter? A. That is right.

Q. Do you recall whether The Ohio Oil Company ever reconveyed to the Potlatch Oil and Refining Company any part of the lands described in the Exhibit G. I will place my question in another way—strike that please. Did The Ohio Oil Company ever reconvey to Potlatch Oil and Refining Company the lands described as the Oliver O'Hannon lease?

A. Yes.

Mr. McCabe: Just a moment. To which we object on the ground no foundation laid for the question; it attempts to elicit evidence that is not proper on cross-examination. It is wholly not within the issues involved in this case, and it is wholly irrelevant and immaterial and incompetent for any purpose.

Mr. Everett: You introduced statements, Mr. McCabe, from that same lease.

Q. (By Mr. Everett): What was your answer?

A. Yes.

Q. Do you recall when that was?

A. I don't recall the date, no.

Q. Can you state approximately when it was?

A. No, I don't remember.

(Whereupon instruments were marked Defendant's Exhibits I and J for identification.)

(Testimony of Jean P. Gerlough.)

Q. (By Mr. Everett): Have you ever examined the original of the assignment about which you testified covering the Oliver O'Hannon lease from Ohio?

A. Yes, I have.

Q. Would you look at Defendant's proposed Exhibit I and state what that is?

A. It is an assignment from The Ohio Oil Company to Potlatch Oil and Refining Company of the Oliver O'Hannon lease, East Half of the—I don't see all the description here.

Q. And does that appear to be a true and correct photostatic copy of the original?

A. As near as I can recall it is a true copy.

Q. And I hand you Defendant's proposed Exhibit J and ask you to state that that is?

A. It is a cancellation of operating agreement between Potlatch Oil and Refining Company and The Ohio Oil Company covering the Oliver O'Hannon lease.

Q. Have you ever seen the original of that instrument?

A. Yes, I have.

Q. Does that appear to be a true and correct copy?

A. It does. [259]

Mr. Everett: I might state to the court we have made diligent effort to find these. I didn't actually notify plaintiffs to produce the originals but I assumed that Mr. McCabe would have no objection in view of this witness' testimony to substitute the photostat for the original, even though he may have other objections.

Mr. McCabe: To this offer in evidence of De-

(Testimony of Jean P. Gerlough.)

Defendant's proposed Exhibits I and J the Plaintiffs object on the ground that they are wholly irrelevant and immaterial for any purpose, no proper foundation has been laid for the admission of these instruments; that it attempts to inject into this case collateral questions that are wholly without foundation in the pleadings in this case and relates to different lands and entirely different contract than the operating agreement involved in this action.

The Court: It seems to me there is evidence in here about those O'Hannon lands and it is difficult for the court to say at this moment whether it is material or not.

Mr. McCabe: I just want to make my objection.

The Court: I will receive them subject to the objection, receive both exhibits, I and J.

(Whereupon said Defendant's Exhibits I and J, offered and received in evidence, subject to objection, are a part of this record.) [260]

Q. (By Mr. Everett): Were you personally acquainted with Mr. John McFayden?

A. Yes, I was.

Q. Is it a fact he was or was not the Division Manager?

A. I knew him to be the Division Manager of The Ohio Oil Company.

Q. In the Sweet Grass Arch or Kevin Sunburst, or whatever you call that field——

A. Yes.

Q. Including the Baker and Sinton leases?

A. Yes.

(Testimony of Jean P. Gerlough.)

Q. As well as the O'Hannon and Baptise C. Sinton leases? A. Yes.

Q. You testified with reference to certain sales of oil from the field, who was the principal purchaser of oil in the field or has been the principal purchaser of oil in the field during the period from the time Inland Empire Syndicate and Potlatch Oil became interested in there?

A. I think that varied from time to time. At the time I testified I believe that International was purchasing the most of the oil in the field.

Q. What was the capacity of that refinery?

A. In barrels?

Q. In barrels per day?

A. At the time I can't recall. I think it was 3,000 [261] barrels or 4,000.

Q. And were they purchasing crude oil to the extent of their capacity to run during that time you testified about?

A. Yes, we were producing enough from the Shoshoni pool to run that refinery.

Q. So any oil over and above the amount they were purchasing couldn't be run through that refinery, would that be your reasonable conclusion?

A. There were times when the crude oil was stored in the field, they weren't running the refinery at all times and both the Ohio and International stored oil at certain times but I don't recall those times, dates.

Q. Well is it your general impression or recol-

(Testimony of Jean P. Gerlough.)

lection that the refinery was running all the oil it could handle during that period?

A. They were running. I don't know whether they were running absolutely to capacity or not, and they were enlarging the capacity of the refinery from time to time. I couldn't answer that definitely.

Q. And the sales of Shoshoni—

A. Shoshoni Oil Company.

Q. To the refinery—you were manager of the Shoshoni at that time? A. Yes, I was.

Q. What were the arrangements under which you were selling your oil to the International Oil and Refining Company? [262]

A. There were spot oil purchases from in the middle of July, 1924, until the spring of 1925. I think it was March, 1925, and after that a contract was entered into with International Refining Company for the purchase of that oil.

Q. And do you recall the terms of that contract or do you have the contract with you?

A. I haven't it with me, no.

Q. Do you recall the terms of the contract with reference to the matter of price to be paid for oil to be purchased thereunder?

A. No, I do not. I don't remember the terms.

Q. Who posted prices in the field?

A. The Ohio Oil Company had a price which they said was the posted field price but other purchasers were not going by that price.

Q. During what period?

A. From 1924 until 1928 to my knowledge.

(Testimony of Jean P. Gerlough.)

Q. What price did Shoshoni Oil Company receive for its oil from International Refining Company, is it?

A. Yes. The price varied from time to time.

Q. Well with relation to the price at which Ohio was purchasing in the field?

A. Well from July, 1924, until I believe October, 1926, International Refining Company was paying 12½ cents [263] a barrel more for oil than The Ohio Oil Company was; and from 1926 on until through into 1928 International Refining was paying ten cents a barrel more than The Ohio Oil Company was.

Q. During that period that Shoshoni and other producers in the field were selling to International Refining Company were those sales all under special contract?

A. No, I don't believe so. There were some contracts and a lot of them were spot sales.

Q. What do you mean by spot sales?

A. Well it is just a verbal agreement; the purchaser agrees to take your oil.

Q. He agrees to buy 2,000 barrels of oil?

A. Oh, yes, agrees to buy so much oil and pay so much for it; no written contract involved.

Q. But they were special arrangements?

A. Yes.

Q. And that was the situation with your company, Mr. Gerlough?

A. That was the situation with all the companies I was familiar with in that part of the field and

(Testimony of Jean P. Gerlough.)

there were six or seven companies selling oil out of that pool at that time.

Q. You testified with reference to a meeting of the trustees of Inland Empire Oil and Gas Syndicate?

Mr. Everett: Do you have the minutes of [264] that meeting, Mr. McCabe?

Mr. McCabe: What meeting was that?

Mr. Everett: The meeting about which you endeavored to have him testify.

Mr. McCabe: Do you have those minutes here?

Mr. McCabe: There was no minutes made. It was just a meeting called to discuss the situation.

Mr. Everett: Do you have the minutes of the Potlatch Oil and Refining Company?

Mr. McCabe: Yes, I have.

Mr. Everett: May we see those, Mr. McCabe?

Mr. McCabe: What is it you want? You gave a notice to produce just one meeting.

Mr. Everett: Well let's see that meeting.

Mr. McCabe: We will object to going all over the minutes of the Potlatch Oil Company in the absence of notice to produce and in the absence of showing any materiality of the evidence.

Mr. McCabe: If the court please, we ask that counsel be confined to specifying certain meetings and having those meetings, having the witness identify those meetings and not come in here under the guise of cross-examination and attempt to make a discovery proceeding here. Now we have been served with notice to produce meetings of the com-

(Testimony of Jean P. Gerlough.)

pany as to a certain day and I think counsel should be [265] limited to that notice as to minutes.

Mr. Everett: I have no desire to read your proceedings, Mr. McCabe.

Mr. McCabe: Are you through with that?

Mr. Everett: No, I am not through with it. Could you point out the minutes to me of July 13, 1932, again?

The Witness: Potlatch Oil and Refining Company.

Q. And to the minutes of July 14th, 1932, I will ask you to read the portion thereof concerning the action taken with reference to Mr. T. P. Jones there?

Mr. McCabe: I would like to look at that and form an objection before the witness reads it.

The Court: Very well.

Mr. McCabe: We object to the question and to the evidence attempted to be elicited by the question on the reading of the portion of the minutes referred to on the ground that the minute entry is wholly incompetent, irrelevant and immaterial, and relates to a matter not within the issues; and, furthermore, does not relate to any matter testified by the witness on direct examination; and for the further reason that it refers to a controversy between persons who as far as the parties to this action are concerned are wholly unrelated in any manner to the action; and for the further reason that it is an attempt to contradict evidence which the plaintiffs brought out on cross-examination in, at the time of the [266]

(Testimony of Jean P. Gerlough.)

taking of the Jones deposition and the defendant is bound by such evidence, and it relates entirely to a collateral matter and has no bearing whatsoever on any issue in this case.

Mr. Everett: Could I answer that objection?

The Court: Yes.

Mr. Everett: The plaintiffs here have presented as a witness one T. P. Jones and certainly we as defendants are entitled to attack his credibility in any way that we can and certainly from their own records, and I call the court's and counsel's attention to the fact that Mr. Gerlough is not only a witness to this action but he is a party to a suit, and if you don't want to ask him on cross-examination, we will ask him as a party to the case.

Mr. McCabe: We object to it for the further reason that this testimony——

The Court: Perhaps it isn't proper cross-examination but you can make your introduction to it in chief on the defense.

Mr. McCabe: As I understand this is improper cross-examination, and counsel is adopting the evidence as evidence in chief in support of his case, is that right?

The Court: I don't know what he is going to do. I thought it was improper cross-examination; that is the only part of your objection I am ruling on and that is enough. [267]

Mr. Everett: If Mr. McCabe would rather, I will wait and ask Mr. Gerlough to take the stand on defense. I think I am entitled to cross-examine any

(Testimony of Jean P. Gerlough.)

party to the suit and cross-examine him and not be bound by his testimony under the rules.

Mr. McCabe: All right, if he wants to make him his witness, he can.

The Court: You want to make him your own witness?

Mr. Everett: I want to examine him as a party to the suit.

The Court: Very well, you may do that. You may make your objection.

Mr. McCabe: Now as to this evidence attempted to be introduced or elicited by the defendant this is wholly incompetent, irrelevant and immaterial for any purpose, your Honor.

The Court: You have already made your objection?

Mr. McCabe: I had.

The Court: I am allowing him to do this subject to your objection.

Mr. McCabe: Oh.

The Court: I will see later on whether it is material.

The Witness: This is a resolution entered in the minutes of July 14th, 1932, in the minute book of the Potlatch Oil and [268] Refining Company. Whereas at the meeting in Spokane Mr. Jones assured the board that the Jones Oil Company would before June 16th, 1932, reassign to the Potlatch Oil and Refining Company the two A. L. Perkins leases and on that assurance it was agreed that the suits now pending would not be prosecuted by the Pot-

(Testimony of Jean P. Gerlough.)

latch Oil and Refining Company, and, whereas, T. P. Jones or the Jones Oil Company have failed to execute and deliver such releases, and, whereas, since the meeting in Spokane further discrepancies and questionable accounts on the part of Mr. Jones have come to light, and, whereas, since the arrival of members of the board in Shelby for the purpose of attending this meeting several matters have come to the attention of the board which are causing considerable inconvenience, annoyance and monetary loss to the Potlatch Oil and Refining Company, now, therefore, be it hereby resolved that the General Manager instruct the company's attorney, L. P. Donovan, to carry the pending suits to a verdict, and also use every effort to recover personal property owned by the Potlatch Oil and Refining Company that has either been lost, strayed or stolen, and further at this time its being seized, sold and removed by the creditors of T. P. Jones or Jones Oil Company. And be it further resolved that T. P. Jones and Jones Oil Company be requested to vacate the offices and rooms of the Potlatch Oil and Refining Company and turn over the keys thereto. [269]

Q. You were reading from the original minute book of the Potlatch Oil and Refining Company?

A. That is correct.

Q. July 14th, 1932? A. That is right.

Q. And that is a true and correct report of the action taken on that date? A. That is right.

Mr. McCabe: If your honor please, I desire right at this time to cross-examine this witness as to this

(Testimony of Jean P. Gerlough.)

particular entry because it is so clearly a collateral matter that I am satisfied upon cross-examination the entire evidence will be excluded.

Q. (By Mr. McCabe): Mr. Gerlough, at the time when this meeting was had and these minutes were prepared was there any action pending against Mr. Jones personally? A. No.

Q. And what was the action that was pending?

A. An action pending to recover certain leases which had been assigned previously to the Jones Oil Company.

Q. And what was Jones Oil Company, a corporation?

A. I believe it was a Montana corporation. I couldn't testify as to that.

Q. At the time when this suit was being maintained was Mr. Jones a resident of Montana?

A. Mr. Jones?

Q. Yes.

A. He lived at Shelby; his residence was in Vogel, Idaho. [270]

Q. And at the time these minutes were written was Mr. Jones in Shelby, Montana? A. No.

Q. And this suit that was brought do you know whether or not the service of summons in the action was served upon Mr. Jones or some other officer of the company?

Mr. Everett: I object to that. I think the best evidence rule should apply even on cross-examination.

(Testimony of Jean P. Gerlough.)

Mr. McCabe: This is cross-examination, your Honor.

The Witness: Service was accepted by E. A. Rice, Secretary of the Jones Oil Company in Shelby.

Q. Now with respect to the suit it was merely a controversy between the Jones Oil Company, a corporation, and the Potlatch Oil and Refining Company, a corporation? A. That is correct.

Q. And the Jones Oil Company was claiming as an offset to the claims of the Potlatch Oil and Refining Company that the Potlatch Oil and Refining Company was indebted to Mr. Jones, the President, in a large sum of money? A. That is right.

Q. And the question of Mr. Jones' honesty or credibility was not involved in this suit in any way, was it, the suit you testified to?

A. No, not the suit to recover the leases, no.

Mr. McCabe: Now, if your Honor please, we move to strike this evidence to show it relates to an independent [271] matter and the entire controversy is not proper evidence to test the credibility of a witness.

The Court: What have you to say? How are you going to connect it up with Jones or with this suit? Have you any way of doing that?

Mr. Everett: I think the minutes to the action taken accord what the instructions were in proceeding with the suit. The minutes themselves discredit Mr. Jones. He testified he left the company in 1932, and I would like to go on now and we have this thing to show the circumstances under which

(Testimony of Jean P. Gerlough.)

he left the Potlatch employ were anything but savory as I understand it.

Mr. McCabe: This is certainly clearly improper cross-examination as to how you are going to test the credibility of Mr. Jones; at any rate when he already made this man his witness. I renew my objection and move to strike it.

Mr. Everett: Mr. Gerlough is a party to this suit.

Q. (By Mr. Everett): Do you know what the circumstances were upon Mr. Jones leaving the employ of the Potlatch Oil and Refining Company?

A. Yes, I do.

Q. Would you relate those circumstances?

A. Jones Oil Company had gone broke and they were unable to perform the terms of their leases and contracts with the Potlatch Oil and Refining Company. They were behind in their [272] payments on royalty and lease rentals and so forth on the leases. They were unable to pay and the Jones Oil Company hadn't made restitution to the Potlatch in that connection and the company therefore started action to recover the leases and to get a judgment against the Jones Oil Company covering the royalties and rentals and one thing and another which the Jones Oil Company owed to the Potlatch.

Q. Had Mr. Jones overdrawn his salary?

Mr. McCabe: Just a minute. To which we object on the grounds that is clearly improper and inadmissible for any purpose, and if it is an attempt to impeach Mr. Jones, there's no foundation has been

(Testimony of Jean P. Gerlough.)

laid for the admission of this evidence and it wholly fails to attack or prove Mr. Jones is not a credible witness. The statutes of Montana provide that a person may be impeached by proof of bad character or that is by proof of general reputation for truth, honesty and integrity, and that the witness has made prior contradictory statements, and such evidence must be on a material point involved in the case and not to some collateral matter, and that is the rule as to testing credibility and also the rule as to impeachment.

The Court: Well I will permit him to say under what circumstances he left the company subject to your objection and then we will see later on whether it has any materiality at all. I don't know what their proof is going [273] to be because I am not a mind reader but when the evidence is all in then I will be better able to judge materiality and admissibility of this testimony in respect to Jones.

Mr. Everett: Read the last question.

(Question read.)

Q. Had Mr. Jones overdrawn his salary?

A. At the time Mr.—there was certain disputes with the management of the company. There was internal dissension in the company what should be done and what should not be done, and at the time this dissension came up Mr. Jones had claims against the company for several thousand dollars for services and expenses and all at the same time his account was overdrawn in the company, and it is my

(Testimony of Jean P. Gerlough.)

recollection that his claims for services and expenses exceeded the amount of the company claims against him for overdraft in his account. At any rate there was a general discussion about the matter at the meeting in Spokane and the stockholders listened to the whole story and finally the matter was dropped and Mr. Jones resigned of his own free will and that is all there was to it.

Q. That was in 1932 when he left the company?

A. That is right. That was as I say at that time Jones Oil Company had failed and couldn't meet its obligations and the stockholders were somewhat dissatisfied with the way the company, Potlatch Company, was being managed and they suggested that we have a new management. [274]

Q. I have here Plaintiffs' Exhibit E which is the transmittal voucher from Ohio to Potlatch Oil and Gas Syndicate from July 23, 1924 to March 23, 1924, and June 24, 1924 to July 23, 1932, from The Ohio Oil Company to Potlatch Oil and Refining Company; were there any additional transmittal vouchers received with each respective statement whenever there was a credit balance?

A. No, there was no voucher of transmittal with each statement when they were received. Not all of the statements, of course, are there. Some of them are attached with paper clips and lost but all we could find are there.

Q. All that you could find are here?

A. Yes, but each one did have one of those statements attached to it.

(Testimony of Jean P. Gerlough.)

Q. Statements showing credit balances from the beginning right on down to 1943, January, 1943?

A. Now, Mr. Everett, I can't recall each and every statement over the past 25 years; there may have been one or two that didn't have it.

Q. But your recollection?

A. My best recollection is each statement was accompanied with one of those vouchers.

Q. But these are most of them?

A. Yes, that is most of them.

Q. And was that true with all of the leases operated by [275] The Ohio Oil Company and Troy-Sweet Grass and Inland Empire and Potlatch Oil and Refining Company? A. Yes.

Q. Now the statements from Troy-Sweet Grass which were those, The Ohio to Troy-Sweet Grass, referring to Plaintiffs' Exhibit D, from September, 1922, to August, 1923, these are the original statements? A. Yes, they were.

Q. And they came from the files of what company?

A. Troy Sweet Grass. Well, they have been in the possession of the Potlatch Oil and Refining Company as successors in interest to the Troy Sweet Grass Oil and Gas Syndicate.

Q. Have you examined these statements?

A. I have.

Q. And are they in the same form that they were rendered to Potlatch and Inland Empire?

A. Yes, they are.

Q. Covering the same items?

(Testimony of Jean P. Gerlough.)

A. Same character of items.

Q. Same character of items? A. Yes.

Mr. Everett: Do you have, Mr. McCabe, the letter of October 14th, 1924, with date line Deary, Idaho, addressed to Inland Empire, and October 17th, Mr. Wilson to Mr. Harsh?

Mr. McCabe: We have those letters you refer to but I thought you would come here at quarter to two and I would segregate these letters and deliver them to you to see that [276] you had them. Now I have a whole bunch of letters and consequently I have to go through these to get this letter.

Mr. Everett: I asked you if you would line them up.

Q. (By Mr. Everett): I hand you Defendant's Exhibits K and L, so marked for identification and ask you to state if that is the signature of T. P. Jones and J. A. Harsh and the trustees' seal of the Troy Sweet Grass Oil Syndicate?

A. Yes, that is the signature of Mr. Jones and Mr. Harsh.

Q. And is that the seal of the company or syndicate? A. That is right.

Q. And the signatures appearing on the bottom of the page?

A. They are likewise those of Mr. Jones and Mr. Harsh.

Q. And the seal affixed?

A. Potlatch Oil and Refining Company.

Q. I hand you Exhibit L and ask you if those are the signature of Mr. Jones on that instrument?

(Testimony of Jean P. Gerlough.)

A. Yes, it is the signature of Mr. Jones.

Q. In both places? A. Yes.

Q. These proposed exhibits are labeled or called transfers, transfer and division orders, one of them. They are both dated August 3rd, 1923, and relate to the interest of Potlatch Oil and Refining Company in the Irving H. Baker farm with the legal description of the lands which authorizes the Ohio [277] until further notice to receive oil from wells for purchase from the parties severally in the proportions named, and I will ask you if that authorization was ever cancelled by action of the board of directors of Potlatch?

A. As far as I know it never was.

Q. Well, you have the minutes of the Potlatch, would you review those and see if you find any record of any action ever terminating these transfer division orders?

A. I will be glad to look in the minutes but I couldn't say whether that was ever revoked or not. I don't recall it was.

Q. Well, if you would look in them, I could ask you in the morning and then you could testify for sure? A. Yes.

Mr. Everett: Then will you mark this as Defendant's Exhibit M?

(Whereupon said instrument was marked for identification Defendant's Exhibit M.)

Q. (By Mr. Everett): Are you familiar with Mr. Harsh's signature? A. Yes, I am.

(Testimony of Jean P. Gerlough.)

Q. Would you state whether that is his signature on Defendant's proposed Exhibit M?

A. Yes, that is his signature.

Q. And he signs as—in what capacity does he sign the instrument? [278]

A. As Treasurer of the Troy Sweet Grass Oil Syndicate.

Q. You testified I believe that you were an interest holder in the Troy Sweet Grass Oil Syndicate?

A. Yes.

Q. Do you know whether this authorization was ever revoked by action of that syndicate?

A. Not to my knowledge.

Q. Do you have the records of the trustees of the Troy Sweet Grass Oil Syndicate?

A. Minutes?

Q. Yes. A. Yes, I have.

Q. Would you examine them and see if they reflect any reference with reference to having revoked this authorization?

A. Yes, I will.

Mr. Everett: I think that is all we have in connection with cross-examination, your Honor.

The Court: Any redirect?

Mr. McCabe: Yes, I would like to have recross. He has gone into an entirely new matter I haven't covered.

The Court: Go ahead.

Q. (By Mr. McCabe): Mr. Gerlough, referring you to the time when this meeting of July 14th, 1932, was held, and extracts from which minutes have been read into the record, I understood you to say that

(Testimony of Jean P. Gerlough.)

Mr. Jones was overdrawn in his account; by that did you refer that the books of the Potlatch Oil and Refining Company indicated he was overdrawn in his account? [279] A. Yes, that is right.

Q. As against that you further stated he had a claim of several thousand dollars for expenses and services as an offset he was claiming to this amount?

A. That is also correct.

Q. And then isn't it the fact that when the directors examined this account of Mr. Jones and the offset they agreed to offset one claim against the other and do nothing further?

A. Yes, they dropped the whole matter.

Q. That is right? A. That is right.

Mr. McCabe: That is all.

Mr. Everett: While the witness is on the stand I would like to introduce in evidence Defendant's Exhibits K, L and M.

Mr. McCabe: Of course, as far as the instruments are concerned there is no particular objection except that I fail to see that it has any material bearing on this case. There is no time fixed during the running of this agreement. It is merely a statement of The Ohio Oil Company that they will purchase this oil from the Potlatch and Inland and the market price they paid. The market price is not determined by The Ohio Oil Company. The market price is determined by the prevailing price paid by buyers generally in the area, and this is a limitation. If it is the purpose of the defendant to offer this to show just merely that they made this division [280]

(Testimony of Jean P. Gerlough.)

order that is all right, I have no particular objection to it; however, if it is maintained that this division order was agreed upon and continued in effect indefinitely, then I say there will have to be some evidence to connect up these particular exhibits; and, of course, I object on the ground it is not connected up properly and no foundation laid for its admission.

Mr. Everett: The offer was general. I didn't offer it for any specific purpose.

Mr. Donovan: Counsel is in error when he says under the terms of the division order the Ohio should pay some general market price. The language of the order is the oil so received in pursuance of this division order shall be paid for to the well owners or their assigns in proportion to their respective interest shown above at the market price paid by The Ohio Oil Company. Counsel said that the Ohio didn't fix the price but it is the market price paid by The Ohio Oil Company for the same kind and quality of oil on the date of its receipt that fixes the price and the parties here have agreed to that and fixed the—well—it is to remain in force until further notice; The Ohio Oil Company is hereby authorized until further notice to receive oil from these wells.

Mr. McCabe: The instrument is merely a restatement of the terms of the contract. The contract is they will pay the prevailing market price at the wells and that is the [281] obligation they were to

(Testimony of Jean P. Gerlough.)

perform. This is merely a statement that they would pay that market price and it is just repetition.

The Court: It may be received in evidence.

(Whereupon said Defendant's Exhibits K, L, and M, offered and received in evidence, are a part of this record.)

Mr. Everett: Now may it please the court, we have reached the time the court usually adjourns, and I just want one more question from the witness. He is going to look in the minutes to determine the answers to the questions I propounded to him, and I think we can start off in the morning if the court wishes to adjourn at this time. The only thought I had if it wouldn't be imposing too much on counsel or court, we might start earlier in the hopes we can finish with these preliminary matters tomorrow.

The Court: How many more witnesses have you got?

Mr. McCabe: Just the introduction of some communications between The Ohio Oil Company and of the agents of the plaintiffs, certain letters and communications.

The Court: We might start at nine-thirty tomorrow morning. Court will stand adjourned until nine-thirty tomorrow morning.

(5:10 p.m., December 22, 1949.) [282]

(Court resumed, pursuant to adjournment, at 9:30 o'clock a.m. on December 23, 1949, at which time all counsel were present.)

The Court: Good morning, gentlemen. You are ready to begin this morning?

Mr. McCabe: Yes, your Honor.

Mr. Everett: Yes, your Honor.

Mr. Everett: I believe Mr. Gerlough was on the stand when we closed last night and he was going to look up a couple minutes for me.

The Court: Very well.

JEAN P. GERLOUGH

Cross-Examination

(Resumed)

By Mr. Everett:

Q. Mr. Gerlough, I asked you last night if you would check the minutes of the trustees' meeting of the Inland Empire Oil and Gas Syndicate and the directors' meeting of the Potlatch Oil and Refining Company to see if you could find any reference with reference to any action being taken to notify The Ohio Oil Company or terminate the division order introduced?

A. I did not find any. I checked the minutes of the Potlatch and Inland and Troy Sweet Grass and I did not find [283] any orders revoking a division order of these companies with The Ohio Oil Company. However, I did find resolutions authorizing the execution of the division orders by the officers of the company.

Q. Then the division orders that I introduced yesterday were executed pursuant to the authori-

(Testimony of Jean P. Gerlough.)

zations as reflected by the minutes of the board of directors or trustees?

A. That is right, in the Potlatch and the Troy-Sweet Grass; however, I never found any such minutes in the Inland Empire Oil and Gas Syndicate.

Q. I hand you a letter dated October 17, 1924, and ask you to state if you recognize that?

A. I recognize the letterhead and the signature, yes.

Q. Well that letter I asked Mr. McCabe to produce it and it came from the files of Inland Empire, I believe, is that right, Mr. McCabe?

Mr. McCabe: What is that?

Mr. Everett: This letter, this came from the files of Inland Empire Oil and Gas Syndicate?

Mr. McCabe: Yes, that is right.

Q. (By Mr. Everett): Would you please state what it is?

A. Well, it is a statement that the drilling charges of a certain well were duplicated on different statements, duplication of charges. [284]

Q. I want you to state on whose letterhead the letter was written and whose signature it was? I will introduce the letter.

A. It is on the letterhead of the Inland Empire Oil and Gas Syndicate and signed by Mr. R. E. Wilson.

Q. You know Mr. Wilson's signature and that is his signature? A. That is right.

Q. This letter was with reference to Defend-

(Testimony of Jean P. Gerlough.)

ant's Exhibit N? I hadn't had it marked prior to having you testify. A. Yes.

Mr. Everett: We offer in evidence letter dated October 17th, 1924.

Mr. McCabe: No objection.

Mr. Everett: On the letterhead, Inland Empire Oil and Gas Syndicate, addressed to Mr. J. A. Harsh, Deary, Idaho, and signed by R. E. Wilson.

Mr. McCabe: We have no objection, your Honor.

The Court: It may be received. What is it about?

Mr. Everett: It is very short, your Honor, if you would like to read it.

The Court: Yes.

(Whereupon said Defendant's Exhibit N, offered and received in evidence, is a part of this record.)

Q. (By Mr. Everett): Do you know Mr. John T. O'Neil? [285] A. Yes, I do.

Q. Do you know his signature?

A. I am afraid I don't know. I know L. B. O'Neil's signature but I am afraid I don't know John O'Neil's signature.

Mr. Everett: Did I understand the Court this may be received in evidence?

The Court: Yes.

Q. (By Mr. Everett): Did you find the statements to Potlatch and Empire for the months of November, 1941, and October, 1942? Did you find those? A. Inland Empire, too.

(Testimony of Jean P. Gerlough.)

Q. This is Inland Empire?

A. One Potlatch, too. They are identical.

Q. Just referring to Plaintiffs' Exhibit A, the original statement to Inland Empire Oil and Gas Syndicate of November 30th, 1941, I will ask you to state, Mr. Gerlough, if anything different appears on this statement than had on previous statements, referring to the invitation to please examine this statement carefully?

A. Periodically these statements have that notation on them from The Ohio Oil Company auditors I think every year or every year or two the auditors who were working on Ohio Oil Company records they put this notation on the statements asking if this agreed with your records. The statement does [286] agree with our book records, yes, which were made from the statements themselves.

Q. Well there was no—you found nothing in error in your records or that your records conformed with these then?

A. Our bookkeeping—our records conformed with these statements and they do agree with the statements as far as that is concerned.

Q. I just wondered if you had noticed this invitation to examine from our auditors?

A. Yes, that same notice has appeared at various times throughout the years, notice by the auditors, Ernst and Ernst for The Ohio Oil Company.

Q. And the same appeared on the Potlatch Oil Company?

A. Yes, such routine matters as the auditors put on.

(Testimony of Jean P. Gerlough.)

Q. These are representative of that type of statement? A. Yes.

Q. These two? A. Yes.

Q. Referring also to the statement of October 31st, 1942, to Inland Empire Oil and Gas Company?

A. All we had to set up our books from where those statements and our books conformed to those statements.

Mr. Everett: That is all, Mr. Gerlough. [287]

Redirect Examination

By Mr. McCabe:

Q. Mr. Gerlough, in cross-examination by counsel for the defendant you referred to this minute book this morning of Potlatch Oil and Refining Company? A. That is correct.

Q. And in which you stated you found no minute entries showing that the division orders which were exhibited to you yesterday afternoon by counsel for the defendant had been revoked or cancelled?

A. That is right.

Q. Now did you find—I wish you would refer to the same minutes and see if you can find the minutes covering the matter of signing these division orders?

A. Yes, I have them here.

Q. What was the date of the first division order signed as indicated by your records, and I refer to the Inland Empire Oil and Gas Syndicate or the Troy or the Potlatch, either one?

A. The Inland had no record. The Potlatch is here.

(Testimony of Jean P. Gerlough.)

Q. I am referring to the minutes of the Potlatch. Just state. A. May 28, 1923.

Q. And does that set forth the minutes of that meeting? A. Yes, it does.

Q. Those minutes refer to one of the division orders [288] which was exhibited to you yesterday by counsel for the defendant?

A. That is correct.

Mr. McCabe: We ask leave to enter into the record, if your Honor please, the minutes of a meeting of the Potlatch Oil and Refining Company as identified by the witness for June 6th, 1923. These minutes refer to the resolution which specifies what form of order should be signed by them.

The Witness: Is that the correct date, Mr. McCabe?

Mr. McCabe: That is what it says at the bottom.

The Court: Is there any objection?

Mr. Everett: Well, I don't know. He hasn't made an offer of it yet.

Mr. McCabe: I can explain it very briefly, your Honor. Under the agreement that is involved in this action the Troy Sweet Grass Company had to sell all of its oil to The Ohio Oil Company. The Ohio Oil Company agreed to pay the prevailing market price and when division orders was presented it was presented of course under this contract, and in these minutes you will note that the minutes expressly refer and this language appears: "Subject to its usual regulations in relation to the payment for same," definitely referring to the usual

(Testimony of Jean P. Gerlough.)

regulations for payment of same as specified in the contract.

Mr. Everett: It doesn't say that Mr. McCabe. That is your interpretation. [289]

Mr. McCabe: It is right here if you wish to read it, Mr. Everett.

Mr. Everett: The wording is subject to its usual regulations in reference to the payment for same, and does not say anything about the contract or anything else. If you want to offer it, I will object to it.

Mr. McCabe: I may have made a mistake as to the date.

The Witness: Date of May 28th, 1923. I think you said June.

Mr. McCabe: Oh, yes, I wish to correct that. The minutes of the meeting May 28th, 1923, as shown in the minute book of the Potlatch Oil and Refining Company.

Mr. Everett: Are you going to read that into the record, Mr. McCabe?

Mr. McCabe: I thought we would just have the reporter copy it into the record.

Mr. Everett: That is all right, and my objection if there is any attempt to alter or vary the division orders which are already in evidence, I would object to it as not being, as being a preliminary matter to the execution of the division order itself; if it does not alter or vary it, I have no objection to it. I don't think, or to attack the division order at this late

(Testimony of Jean P. Gerlough.)

date to show his officers were not authorized to execute it. [290]

The Court: From your standpoint it might be construed two different ways, might it not?

Mr. Everett: I don't see that it can.

The Court: Well, we will admit it.

(Whereupon said Minutes of May 28, 1923, of Potlatch Oil & Refining Company, are in words and figures as follows, to wit:)

Record of Minutes, Directors' Meeting
(Copy)

Meeting of the Board of Directors of the Potlatch Oil & Refining Company, held in the offices of the Company at Shelby, Toole County, Montana, Monday, May 28, 1923, in accordance with notice given to all Directors of the Corporation.

Meeting called to order at four o'clock p.m. by the President, T. P. Jones.

On roll call, the following Directors were present: T. P. Jones, C. W. Craney, A. E. Douglas and J. A. Harsh; absent: W. J. Ball. The President declared a quorum present and the meeting open for the transaction of business.

The minutes of the meeting of April 6, 1923, were read and approved as read.

(Excerpt.)

Director J. A. Harsh then introduced the following resolution, to wit: [291]

(Testimony of Jean P. Gerlough.)

Resolved, That the President and Treasurer, or either of them, be and they are hereby authorized:

(1st) To execute on behalf of this Company all division orders for well interests from which oil is now, or will hereafter be delivered to The Ohio Oil Company, or upon its order; for all well interests owned by this Company, in pursuance of which all oil run from well interests owned by this Company shall become the property of The Ohio Oil Company, when delivered to said The Ohio Oil Company, or upon its order, subject to its usual regulations in relation to the payment for same;

(2nd) To collect and receive moneys due this Company for oil delivered to, or upon the order of, The Ohio Oil Company; and

(3rd) To execute assignments and transfers of well interests owned by this Company, to be filed with The Ohio Oil Company transferring such interests to others.

Motion made by J. A. Harsh, seconded by A. E. Douglas, that the resolution as read be adopted, which motion was carried by unanimous consent of all Directors present, viz: T. P. Jones, C. W. Craney, A. E. Douglas and J. A. Harsh; W. J. Ball being absent. The President declared the motion carried and the resolution so adopted.

On motion, the Directors adjourned to meet at the Davenport Hotel in the City of Spokane at ten o'clock a.m., [292] Wednesday, June 6, 1923.

T. P. JONES,
President.

(Testimony of Jean P. Gerlough.)

Attest:

J. A. HARSH,
Secretary.

(Copy—Minutes May 28, 1923.)

Q. (By Mr. McCabe): Now was there another minutes of the Potlatch Oil and Refining Company and Board of Directors referring to the other, other division orders to be signed?

A. The minutes of the Potlatch Oil and Refining Company dated February 9th, 1926, have the similar resolution incorporated into them and the same wording exactly as the previous resolution.

Q. And referring to the——

A. Referring to the division orders authorizing the officers of the corporation to execute division orders for the sale of oil to The Ohio Oil Company.

Mr. Everett: May I ask the witness a question before this goes in?

Mr. McCabe: Yes.

Q. (By Mr. Everett): Was a division order executed pursuant to this [293] authorization?

A. I didn't know the dates of the orders. We haven't the orders filed there and a copy of the order is not filed there but you had the orders introduced in evidence yesterday.

Q. I believe they were dated earlier than this action?

(Testimony of Jean P. Gerlough.)

A. You introduced a number of them. They executed these orders from time to time and I don't know whether these correspond exactly to the same orders or not.

Q. I have been unable to find the originals of some of those orders and that is why I asked you the question.

A. They were not filed with our minutes.

Q. Oh, I just ask you if it is reasonable to assume this authorization was followed up by the execution of the division order which was transmitted to The Ohio Oil Company?

A. At least it occurred at that time.

Q. At the time?

A. At that particular time, yes.

Mr. Everett: I have no objection to this.

Mr. McCabe: I would ask leave this be read and copied into the minutes.

The Court: It may be read and copied.

Mr. McCabe: And this refers to the minutes of the meeting?

The Witness: February 9th, 1926. [294]

Mr. McCabe: Of February 9th, 1926.

(Whereupon said Minutes of February 9, 1926, of the Potlatch Oil & Refining Company, are in words and figures as follows, to wit:)

Record of Minutes, Directors' Meeting
(Copy)

Meeting of the Board of Directors of the Potlatch Oil & Refining Company, held in the Davenport

Hotel in the City of Spokane, State of Washington, on Tuesday, February 9, 1926.

The meeting was called to order at nine o'clock a.m., by the President, T. P. Jones, pursuant to notice given to all Directors by the Secretary.

On roll call, the following Directors were present: T. P. Jones, W. J. Ball, C. W. Craney and J. A. Harsh; absent: B. H. Hornby. The President declared a quorum present and the meeting open for the transaction of business.

The minutes of the meeting of April 2, 1925, were then read and approved as read.

(Excerpt.)

Director J. A. Harsh then introduced the following resolution, to wit:

“Resolved, That the President and Treasurer, or either of them be, and they are hereby authorized:

“(1st) To execute on behalf of this Company all division orders for well interests from which oil is now, or will [295] hereafter be delivered to The Ohio Oil Company, or upon its order; for all well interests owned by this Company, in pursuance of which all oil run from well interests owned by this Company shall become the property of The Ohio Oil Company, when delivered to said The Ohio Oil Company, or upon its order, when delivered to said The Ohio Oil Company, or upon its order, subject to the usual regulations in relation to the payment of same;

“(2nd) To collect and receive moneys due this

(Testimony of Jean P. Gerlough.)

Company for oil delivered to, or upon the order of, The Ohio Oil Company; and

“(3rd) To execute assignments and transfers of well interests owned by this Company, to be filed with The Ohio Oil Company transferring such interests to others.”

Motion made by W. J. Ball, seconded by C. W. Craney, that the resolution as read be adopted, which motion was carried by the unanimous consent of all Directors present, viz: T. P. Jones, W. J. Ball, C. W. Craney and J. A. Harsh voting “yes”; B. H. Hornby being absent, and the President declared the motion carried and the resolution so adopted unanimously.

There being no further business, on motion the Board adjourned.

T. P. JONES,
President.

Attest:

J. A. HARSH,
Secretary. [296]

Q. (By Mr. McCabe): Now have you searched through the minutes of the company which you have presented here in court to find any other resolutions passed with reference to the signing of the division orders?

A. I have found such a resolution in the minutes of the Troy-Sweet Grass Oil Syndicate.

Q. I mean the Potlatch?

(Testimony of Jean P. Gerlough.)

A. Those are the only two references I found in the Potlatch minutes.

Mr. McCabe: If your Honor please, yesterday in the examination of this witness I thought I had covered the relations and positions of T. P. Jones with the Potlatch Oil and Refining Company and Inland Empire Oil and Gas Company, and I find in checking my notes that I did not complete that and I would ask leave to reopen my case in chief to the extent of having the witness identify the officers.

The Court: Very well, you may do so.

Q. (By Mr. McCabe): Mr. Gerlough, do you know what position Mr. T. P. Jones held with the Inland Empire Oil and Gas Syndicate between June 15th, 1922, to the time of his resignation or his vacation of the office?

A. He was a trustee. T. P. Jones was a trustee of the Inland Empire Oil and Gas Syndicate from May, 1922, until [297] the spring of 1941 when he resigned, he was a trustee.

Q. And what other official position did he hold with the Inland Empire Oil and Gas Syndicate?

A. He held no official position other than that.

Q. With respect to the Potlatch Oil and Refining Company did Mr. Jones occupy or sustain any relation to that company as an official or employee or otherwise?

A. Mr. Jones was President and General Manager of the Potlatch Oil and Refining Company from the time of its organization, I believe it was in 1923, until 1932, and I wish to correct the state-

(Testimony of Jean P. Gerlough.)

ment I made yesterday that he had resigned. In going through the minutes this morning I find that he did resign from the Inland Empire Oil and Gas Syndicate but in the Potlatch Oil and Refining Company in 1932 the stockholders elected a new board of directors and T. P. Jones was not included and he was automatically relieved as an officer and director of the corporation because of the fact that he was not chosen a director at that time.

Q. And what was the date of that meeting of the directors?

Mr. Everett: The witness has already testified in 1932.

The Witness: The meeting of the stockholders of the Potlatch Oil and Refining Company, July 14, 1932.

Q. And was he elected a director or not in that meeting? [298]

A. He was not elected a director.

(Whereupon the Minutes of May 28, 1923, of the Trustees of the Troy-Sweet Grass Oil Syndicate, are in words and figures as follows, to wit:)

(Copy)

Minutes of a meeting of the Trustees of the Troy-Sweet Grass Oil Syndicate, held in the offices of the Company at Shelby, Montana, on May 28, 1923, in accordance with a notice issued to all of the trustees of said Syndicate.

The meeting was called to order at eleven o'clock a.m. by the President, T. P. Jones.

(Testimony of Jean P. Gerlough.)

On roll call the following Trustees were present: T. P. Jones, A. E. Douglas, K. G. Luke and J. A. Harsh; absent: J. C. Campbell. The President declared a quorum present and the meeting open for the transaction of business.

The minutes of the meeting of April 6, 1923, were read and approved as read.

Moved by J. A. Harsh, seconded by A. E. Douglas, that a proxy be given to T. P. Jones to vote all of the stock held by this Syndicate in the Potlatch Oil & Refining Company at the Special Meeting of the Stockholders, or any adjournment thereof, of the Potlatch Oil & Refining Company to be held May 28, 1923, and that the Secretary be authorized to certify to said proxy and deliver same to the Secretary of the [299] Potlatch Oil & Refining Company. Motion carried, all Trustees present voting "yes."

J. A. Harsh then introduced the following resolution:

"Resolved, That the President and Treasurer, or either of them, be and they are hereby authorized:

"(1st) To execute on behalf of this Company all division orders for well interests from which oil is now, or will hereafter be delivered to The Ohio Oil Company, or upon its order; for all well interests owned by this Company, in pursuance of which all oil run from well interests owned by this Company shall become the property of The Ohio Oil Company, when delivered to said The Ohio Oil Company, or

(Testimony of Jean P. Gerlough.)

upon its order, subject to its usual regulations in relation to the payment for same;

“(2nd) To collect and receive moneys due this Company for oil delivered to, or upon the order of, The Ohio Oil Company; and

“(3rd) To execute assignments and transfers of well interests owned by this Company, to be filed with The Ohio Oil Company transferring such interests to others.”

Moved by J. A. Harsh, supported by A. E. Douglas, that the resolution as read be adopted, which motion was carried by unanimous consent of all Trustees present, viz: T. P. Jones, A. E. Douglas, K. G. Luke and J. A. Harsh; J. C. Campbell being absent. The President declared the motion [300] carried and the resolution so adopted.

On motion, the Trustees adjourned to meet at the Davenport Hotel in the City of Spokane at two o'clock p.m., Wednesday, June 6, 1923.

T. P. JONES,
President.

Attest:

J. A. HARSH,
Secretary.

Mr. McCabe: Do you have that notice to produce with you, Mr. Everett?

Mr. Everett: Yes, sir. You are referring to which one. Here is the one you filed.

Mr. McCabe: Have you the original letter dated

(Testimony of Jean P. Gerlough.)

June 8th, 1923, addressed to Mr. L. J. Yealy, Superintendent of The Ohio Oil Company, at Shelby, from the Inland Empire Oil and Gas Syndicate?

Mr. Everett: I have. Do you have the response to it?

Mr. McCabe: I don't know. I will see. Let's see. Let's get the first one.

Mr. Everett: We might simplify this considerably. We can take these letters you want, the responses I want, and [301] we can put them all in without objection. I don't want the original letters to go in without the answer to it.

Mr. McCabe: The responses you request in the notice to produce I find there is a letter of June 20, 1923, signed by J. P. Sutton, Treasurer. I don't know if that refers to this one or not. The letter I have requested is the letter of June 8th, 1923.

Mr. Everett: And I have requested the response to that letter.

Mr. McCabe: What was the date of the response? I have many letters, whether these are responses or not, if you will indicate to me the date of that response I can get it because I have all these letters in order, Mr. Everett.

Mr. Everett: I think it is item 5 in my second notice to produce original letter dated June 20th, 1923.

Mr. McCabe: I don't have that letter. Is that the letter from Mr. Sutton?

Mr. Everett: That is the letter from Mr. Sutton,

(Testimony of Jean P. Gerlough.)

yes, sir; well, if you don't have it that is all there is to that.

Mr. Donovan: They have a letter.

Mr. McCabe: The original of that, Mr. Everett, is a part of the R. B. Wilson file. I have a copy.

Mr. Everett: If this is a copy, this is satisfactory.

Mr. McCabe: Now, have you the original letter dated [302] September 11, 1923, addressed to F. E. Hurley, Vice President, with reference to the Baker lease? The date of the letter was September 11th.

Mr. Everett: I don't happen to have it.

Mr. McCabe: It was signed by R. E. Wilson.

Mr. Everett: I don't have the original. I did find, however, a copy of it in the file. Did you find the response to that one?

Mr. McCabe: And do you have——

Mr. Everett: Do you have the response to this one, letter dated September 22nd?

Mr. McCabe: What date was that?

Mr. Everett: September 22, 1923.

Mr. McCabe: That is the date?

Mr. Everett: September 22, 1923.

Mr. McCabe: From F. E. Hurley?

Mr. Everett: That is right.

Mr. McCabe: I have a copy of it. The original letter is a part of the deposition of R. E. Wilson.

Mr. Everett: This appears to be a correct copy. All right.

Mr. McCabe: Do you have the original letter dated October 3rd, 1924, addressed and mailed to

(Testimony of Jean P. Gerlough.)

The Ohio Oil Company from the Inland Empire Oil and Gas Syndicate?

Mr. Everett: We were unable to find that letter. Do [303] you have a copy of it?

Mr. McCabe: Yes, I have the copy. The original is part of the deposition of R. E. Wilson.

Mr. Everett: And do you have the response to this letter?

Mr. McCabe: Yes, just a moment, I think I have. What is the date?

Mr. Everett: I don't recall the date off hand. I didn't list them by date. All I wanted was to get the entire picture of the letters involved and the responses.

Mr. Everett: Might I suggest to the court that we take some time here. There is no need for the court to sit here and see us go through all these old letters. ,

The Court: You want to get together when we take a recess and find out what you want and what responses there were?

Mr. Everett: I have everything Mr. McCabe asked for. We can probably go ahead with it. He probably wants to put his case on in that order and I wouldn't want to do anything to upset that.

The Court: Go ahead. I will see. It seems to me you might have gotten together outside of court and had them ready to produce this morning; that would have saved the most time. Go ahead.

Mr. McCabe: Have you got the response to the letter—— [304]

(Testimony of Jean P. Gerlough.)

Mr. Everett: I think that is the letter of December 5, 1924, item 8 in my notice, second notice.

Mr. McCabe: Yes, I have the original. Do you have the original letter dated December 1st, 1924, addressed to J. P. Sutton, Assistant Treasurer of The Ohio Oil Company?

Mr. Everett: I was unable to find that one. Do you have a copy of it?

Mr. McCabe: Yes.

Mr. Everett: Do you have the response?

Mr. McCabe: The original response is a part of the deposition of R. E. Wilson, offered in evidence. I have a copy of it. Do you have the original letter dated January 30th, 1942, from Inland Empire Oil and Gas Syndicate to F. E. Hurley, Vice President?

Mr. Everett: We were unable to find it. Do you have a copy of it?

Mr. McCabe: Yes, I have a copy. I presume the original of that letter was introduced in evidence in the deposition of R. E. Wilson and that is a copy.

Mr. Everett: Do you have the response to that letter?

Mr. McCabe: The response to that letter is also entered as the original in the deposition of R. E. Wilson. Do you have the original letter dated January 23, 1925, addressed to The Ohio Oil Company?

Mr. Everett: We were unable to find it. Do you have [305] a copy of it?

(Testimony of Jean P. Gerlough.)

Mr. McCabe: That is Inland Empire Gas Syndicate.

Mr. Everett: The response to letter of January 23, 1925.

Mr. McCabe: I have the response letter. Do you have the original letter dated January 28, 1925, addressed to The Ohio Oil Company at Shelby, Montana?

Mr. Everett: I have. Do you have the response to it?

Mr. McCabe: I have the response to it. Attached to that was an exhibit. Do you have the original letter dated January 28th, 1925, addressed to The Ohio Oil Company at Findlay, Ohio, from the Inland Empire Oil and Gas Syndicate?

Mr. Everett: No, the letters I have are addressed to The Ohio Oil Company, Shelby, Montana. I have two of them. They are identical in wording, one from Inland Empire and Potlatch asking that office furnish them with charges and credits as they come from the field office, and do you have the responses to those letters?

Mr. McCabe: I do. Do you have the date?

Mr. Everett: They are dated February 9, 1925, and were signed by Mr. Yealy.

Mr. McCabe: February 9th?

Mr. Everett: February 9th, 1925, and were signed by Mr. Yealy. [306]

Mr. McCabe: The original of that is a part of the deposition of R. E. Wilson, but I have a copy.

(Testimony of Jean P. Gerlough.)

Mr. Everett: This is addressed to the Inland; do you have the one addressed to Potlatch?

Mr. McCabe: No, I don't have, but it is an identical letter, as I recall, with respect to the Potlatch.

Mr. Everett: Well, may it be stipulated in the record that there was an identical letter, identical in wording to the letter of February 9th, with the date line Shelby, Montana, and it was addressed to Potlatch Oil Company on the letterhead of The Ohio Oil Company and signed by L. J. Yealy?

Mr. McCabe: No, there wasn't any because the Potlatch Oil Company—that is, there was an identical letter, I recall that.

Mr. Everett: You stipulate it in the record?

Mr. McCabe: Yes, and the record may so show.

The Court: How many more of those have you got?

Mr. McCabe: I have about this many.

The Court: The Clerk can call me when you get through. I am not going to put in any more time here. Go ahead and let me know when you get through.

(Whereupon the court recessed at 10:20 o'clock a.m.)

(Court resumed, pursuant to recess, at 11:10 o'clock a.m., at which time all counsel were present). [307]

Mr. Everett: We want to mark these exhibits Plaintiffs' Exhibit O.

Mr. McCabe: Plaintiffs offer in evidence Plain-

tiffs' Exhibit O, being letters and correspondence between Plaintiffs and Defendant during the period of joint operations embracing the following letters:

Mr. Everett: Letter dated June 8, 1923, Inland Empire Oil and Gas Syndicate to Mr. Yealy, Superintendent, Ohio Oil company.

Letter of June 20th, 1923, addressed to Inland Empire Oil and Gas Syndicate from The Ohio Oil Company.

The next is letter dated September 11, 1923, from Inland Empire Oil and Gas Syndicate to Mr. F. E. Hurley, Vice President, Ohio Oil Company.

Next is letter dated September 22nd, 1923, addressed to Mr. R. E. Wilson, President, Inland Empire Oil and Gas Syndicate from The Ohio Oil Company, signed F. E. Hurley.

Letter dated October 3rd, 1924, addressed to The Ohio Oil Company by Inland Empire Oil and Gas Syndicate.

Letter dated October 8th, 1924, addressed to Inland Empire Oil and Gas Syndicate by J. S. [308] Sutton.

Letter dated December 1, 1924 addressed to The Ohio Oil Company by Inland Oil and Gas Syndicate.

Letter of December 5, 1924, addressed to Inland Oil and Gas Company by The Ohio Oil Company.

Letter of January 30, 1924, addressed to F. E. Hurley, Vice President, Ohio Oil Company, from Inland Empire Oil and Gas.

Letter dated January 23, 1925, addressed to The Ohio Oil Company from R. E. Wilson, President.

Letter dated January 28, 1925, addressed to The Ohio Oil Company by Inland Empire Oil and Gas Syndicate by R. E. Wilson.

Letter dated January 28, 1925, addressed to The Ohio Oil Company from the Potlatch Oil and Refining Company.

Letter dated February 9, 1925, addressed to Inland Empire Oil and Gas Syndicate from L. J. Yealy.

Letter dated January 28, 1925, addressed to Potlatch Oil and Refining Company from The Ohio Oil Company.

Letter dated January 28, 1925, addressed to The Ohio Oil Company from Inland Empire Oil and Gas Syndicate with schedule two pages attached.

Letter dated January 28, 1925, addressed to The Ohio Oil Company from Potlatch Oil and Refining Company.

Letter dated February 3, 1925, addressed to Inland Empire Oil and Gas Syndicate from The Ohio Oil Company. [309]

Letter dated February 9th, 1925, to The Ohio Oil Company from Inland Empire Oil and Gas Syndicate, with schedule labled "Tanks" attached.

Letter dated February 17, 1925, to Inland Empire Oil and Gas Syndicate from The Ohio Oil Company.

Letter dated May 11, 1925, to The Ohio Oil Company from Inland Empire Oil and Gas Syndicate.

Letter dated May 28, 1925, to R. E. Wilson, President, Inland Empire Oil and Gas Syndicate from The Ohio Oil Company.

Letter dated July 17, 1925, to The Ohio Oil Company from Freeman, Thelen and Frary.

Letter dated July 21, 1925, to Freeman, Thelen and Frary by Merle N. Poe, General Counsel, The Ohio Oil Company.

Letter dated October 9, 1924, to Potlatch Oil and Refining Company from The Ohio Oil Company.

Letter dated January 15, 1941, to Potlatch Oil and Refining Company from The Ohio Oil Company.

Letter dated January 14, 1941, to Potlatch Oil and Refining Company from The Ohio Oil Company.

Letter dated January 9, 1941, to The Ohio Oil Company from Potlatch Oil and Refining Company, Inland Empire Oil and Gas Syndicate.

Letter dated December 3, 1938, to The Ohio [310] Oil from Potlatch Oil and Refining Company.

Letter dated December 21, 1938, to Potlatch Oil and Refining Company from The Ohio Oil Company.

Letter dated January 28, 1938, to The Ohio Oil Company from Potlatch Oil and Refining Company and Inland Empire Oil and Gas Syndicate.

Letter dated February 17, 1938, to Potlatch Oil and Refining Company from The Ohio Oil Company.

Letter dated June 1, 1936, to Jean B. Gerlough, from The Ohio Oil Company.

Letter dated June 9, 1936, to Mr. L. M. Kiplin-

ger, from Potlatch Oil and Refining Company and Inland Empire Oil and Gas Syndicate.

Letter dated July 1st, 1936, to Mr. Jean P. Gerlough, Treasurer, from The Ohio Oil Company.

Letter dated May 20, 1936, addressed to The Ohio Oil Company from Potlatch Oil and Refining Company and the Inland Empire Oil and Gas Syndicate.

Letter dated January 7, 1936, to The Ohio Oil Company from Potlatch Oil and Refining Company.

Letter dated January 11, 1937, to Potlatch Oil and Refining Company from The Ohio Oil Company.

Letter dated December 30, 1935, to The Ohio Oil Company from Potlatch Oil and Refining Company.

Letter dated January 6, 1936, to Potlatch [311] Oil and Refining Company from The Ohio Oil Company.

Letter dated January 24th, 1936, to Potlatch Oil and Refining Company from The Ohio Oil Company.

Letter dated January 30th, 1934, to The Ohio Oil Company from Potlatch Oil and Refining Company.

Letter dated July 19th, 1933, to The Ohio Oil Company from Potlatch Oil and Refining Company.

Letter dated July 24, 1933, to Potlatch Oil and Refining Company from The Ohio Oil Company.

Mr. Everett: The above constitute all of Plaintiffs' Exhibit O.

JEAN P. GERLOUGH

resumed the stand and testified as follows:

Redirect Examination

By Mr. McCabe:

At this time, if your Honor please, the Plaintiffs offer in evidence Plaintiffs' Exhibit O, consisting of letters and correspondence between the Plaintiffs and the Defendant, covering periods during which the Defendant was operating the properties under the agreement of June 15th, 1922, involved in this action.

Mr. Everett: There is no objection. We have already identified them in the record.

The Court: All right, they may be received in evidence. [312]

(Whereupon said Plaintiffs' Exhibit O, consisting of correspondence, offered and received in evidence, is in words and figures as follows, to wit:) [313]

(Testimony of Jean P. Gerlough.)

PLAINTIFFS' EXHIBIT O

Inland Empire Oil & Gas Syndicate
A Common Law Trust
Shelby, Montana.

June 8, 1923.

Mr. Lee Yealey, Supt.,
Ohio Oil Company,
Shelby, Montana.

Dear Sir:

Calling your attention to the Baker lease ie., the SW $\frac{1}{4}$ Section 3 and the SE $\frac{1}{4}$ Section 4-35-2W in which the Inland Empire Oil & Gas Syndicate has an equal interest with the Troy-Sweetgrass Syndicate under the working agreement with your company.

Heretofore, the costs of operation on this lease have been made from your office at Findlay, Ohio, to the Troy-Sweetgrass Syndicate. In that we have access to these statements only at the convenience of the Troy-Sweetgrass Syndicate, and in view of the fact that these statements include the costs of operation on the Hannon and Sindon leases in which we have no interest, and furthermore, that some items such as fuel oil credits, interest on money advanced, etc., are combined in such a way as to make our share very difficult to segregate so that we have not yet been able to determine accurately our proportion of the costs, we are asking you to arrange to have a separate statement sent to us

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

covering our one-half of the 45% interest in the lease. If required by your company we will furnish you with an abstract.

We will appreciate your immediate attention in this matter as you will readily see that we are in need of this [314] statement from the fact that this office does not know how much oil, if any, has been sold, nor what the cost of operations beginning last October has amounted to.

Very truly yours,

INLAND EMPIRE OIL & GAS
SYNDICATE,

By /s/ R. E. WILSON,
Pres.-Mgr. [315]

Plaintiffs' Exhibit 5

The Ohio Oil Company
Findlay, Ohio

Producing Department,
J. P. Sutton, Asst. Treas.

June 20, 1923.

Inland Empire Oil & Gas Syndicate,
Shelby, Montana.

Attention: R. E. Wilson, President.

Gentlemen:

We have your letter addressed to Mr. Lee Yealey, requesting separate statements covering cost of operation, Baker lease.

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

We wish to advise that beginning with May business we will render you a statement covering your interest in this lease.

We will continue to forward these statements to you monthly.

Yours truly,

/s/ J. P. SUTTON,

Assistant Treasurer.

HHW:EN [316]

Inland Empire Oil & Gas Syndicate

Shelby, Montana

Sept. 11, 1923.

Mr. F. E. Hurley, Vice-President,
Ohio Oil Company,
Findlay, Ohio.

I. H. Baker lease, SW $\frac{1}{4}$ Sec 3 & SE $\frac{1}{4}$ Sec.
4. Twp. 35N., Rge. 2W. M.M., Toole County,
Montana.

Dear Mr. Hurley:

Calling your attention to the working agreement on the I. H. Baker lease entered into by yourself for the Ohio Oil Company and Mr. T. P. Jones for the Troy Sweetgrass Oil Syndicate, and the subsequent agreement with the Inland Empire Oil & Gas Syndicate covering 22 $\frac{1}{2}$ % of that lease.

In the statements we are getting from the Ohio

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

Oil Co. from Findlay, Ohio, charges are being entered against the lease which do not, as we understand and interpret the working agreement, conform to the agreement as made by yourself and Mr. Jones.

Our understanding of the agreement as stated to your Mr. McFadyen and Mr. Sellery, who advised us to take the matter up with you, is, that only "actual" costs of materials, cost of development, and costs of production should be charged against the lease with an additional 8% interest charge on all money so advanced for the interest or share of the Inland Empire Oil & Gas Syndicate.

The charges for "overhead expenses," "depreciation and automobiles," "work on roads off the lease," and finally [317] "investment and expense—service department," the latter being a part of the cost of building and maintaining the main Swayze Camp from which Ohio Co. operations in this field, and even operations outside of this field are being conducted, are not consistent with our understanding of the terms of the agreement and do not conform to the agreement as written, which states: "The party of the second part hereby agrees to render the party of the first part monthly statements showing the actual costs of expenses of developing and operating said land, etc.

The statements we have received up to and including June 30th, first "cover all actual costs on the lease, including foreman hire, upkeep on field

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

autos, all trucking and labor charges, the latter being charged against the lease at the full price paid by the Ohio Oil Co. including board and room to men. To the cost of material is added a charge covering the cost of handling through the warehouse, "these are all legitimate charges." Then the statements go on with charges such as depreciation on foreman's autos, work on roads off the lease and part of the cost of building the Swayze camp, the three latter charges are unquestionably overhead charges. To this total is added an overhead charge of 10% with an 8% interest charge on the full total. Thus we are charged doubly on a part of the overhead with an interest charge on the double charge. [318]

The charges mentioned in the paragraph second above, are in our opinion, no more a reasonable charge against the least than would be our own overhead expenses. We are as yet paying our overhead from our Capital, expecting later to be reimbursed when we realize a profit from our interest in the Baker lease, and cannot see but that the Ohio Oil Co. should stand its own overhead expense and take its reimbursement from its 55% interest in the lease.

We are writing you who made the contract with Mr. Jones asking that you take the matter up with your Company and see that the agreement is car-

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued):

ried in the spirit and intention in which it was made.

Very truly yours,

INLAND EMPIRE OIL & GAS
SYNDICATE,

By /s/ R. E. WILSON,
President.

REW/LN [319]

Plaintiff's Exhibit 7

The Ohio Oil Co.
Findlay, Ohio

September 22, 1923.

Mr. R. E. Wilson, President,
Inland Empire Oil & Gas Syndicate,
Shelby, Montana.

Dear Mr. Wilson:

I beg to acknowledge receipt of your letter of September 11th in which you call attention to the working agreement on the I. H. Baker lease entered into by the Ohio Oil Company at the Troy Sweetgrass Oil Syndicate and the subsequent agreement with the Inland Empire Oil & Gas Syndicate, voering 22½% of that lease.

I am confident that you are laboring under a misapprehension as to the charges that are being entered against your interest in this lease as, after having investigated the matter, I think all of these

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

charges are being made in accordance with that agreement. We are charging you only with actual cost of development and expenses but many of these costs, while actual, are not direct. That is to say, these expenditures are for the benefit of all the leases and these indirect charges are distributed and included as overhead. An overhead charge is just as legitimate as any other actual charge that should be made against the lease. For example, the District Foreman's time is not charged exclusively to one lease. Therefore, a part of his time and expenses become a part of the cost of [320] production on the Baker lease. It is not charged direct but is included in the 10% overhead. It will take no argument to convince you that a foreman's time does come within the meaning of an actual charge as his services could not possibly be dispensed with. Some of the other items included in the overhead and not direct charges are office salaries, stationery, printing, office rent, light, etc. In connection with the 10% overhead you speak about the 8% interest charge. These two charges have no connection whatever. The interest charge is made, as the agreement provides, for development funds which we advance and for which we are to be reimbursed out of the oil plus 8% on the amount so advanced until it is paid. If you want to dispense with that 8% charge we would be very glad to have you pay currently your proportion of the develop-

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

ment and operating costs and if you care to do this you will please so advise us.

As to the "Investment and Expense—Service Department" charges, these also cover items which are indispensable to the operation of the lease. Unless we built camps and equipment to take care of the men and material it would be impossible out in that country to drill and develop any leases. Instead of building a single camp exclusively on the Baker lease for the operation of that lease we built a general camp to take care of a number of leases and the cost and expense and income of this camp is divided between the several interests in the farms receiving the benefit of the camp. Your proportion is 3.1032%. This is very [321] much cheaper than if we had built a camp on the Baker farm to serve that lease alone. If you are at all acquainted with operations generally over the Rocky Mountain region you will understand that these camps are absolutely necessary and it is the general practice to build large camps to take care of a number of leases. The matter of road-building and the use of automobiles and trucks and all these items come properly within charges that should be made against the lease.

You could hardly expect our company to buy all this equipment and use it for the benefit of a lease and still not make any charge. I have looked up the charges of overhead against the operation of the Baker lease and I am sure that were you to

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

put an organization on to develop and operate that lease as we have done that it could not have been done as efficiently and as cheaply as we have done it. I think our charges are entirely reasonable and ought not to receive any complaints from your company. You speak about having your own overhead. I cannot quite see what that overhead would be as you are taking no part whatever in the work connected with developing the leases and all you have to do is to take a few moments each month to examine our statements. We are furnishing all the funds and taking all the risk and making charges which we think are entirely fair.

Trusting this explanation will be satisfactory to you, I remain.

Yours very truly,

/s/ F. E. HURLEY.

FEH:W [322]

Plaintiff's Exhibit 8

Oct. 3, 1924.

The Ohio Oil Co.

Findlay, Ohio.

Gentlemen:

You will please give your early attention to the following errors in your statements to us covering the Irving H. Baker lease.

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

June statement—your bill No. W 3927,		
1,920.07 bbls oil @ \$1.05.....	\$1,920.07	
Should be.....	2,016.07	
Balance Due		\$ 96.00
July Statement—your bill No. W 4035,		
Drilling charges Irving H. Baker Well		
No. 9, 1710' 6" @ 3.00.....	\$1,154.49	
This drilling charge is duplicated in your August statement.		
August Statement—your bill No. W 4140		
Drilling charges Irving H. Baker Well		
No. 9, 1710' 6" @ \$3.00.....	\$1,154.59	
Your over-charges are: Drilling.....	\$1,154.59	
10% Overhead.....	115.45	\$1,270.04
		<hr/>
Unpaid balance on above errors.....		\$1,366.04

Very truly yours,

INLAND EMPIRE OIL & GAS
SYNDICATE.

.....,

President.

CC to: Casper

Shelby [323]

The Ohio Oil Co.

Findlay, Ohio

Producing Department,

J. P. Sutton, Asst. Treas.

October 8, 1924.

Inland Empire Oil & Gas Syndicate,

Shelby, Montana.

Gentlemen:

Referring to your letter of October 3 in which
you call attention to apparent discrepancies on our

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

invoice as covering I. H. Baker lease, we wish to advise that the oil on our June statement #W 3927 should have read 1828.64 Barrels at \$1.05 instead of 1920.07 Barrels at \$1.05.

We wish to advise that the drilling charges for I. H. Baker Well #9 on our August Bill #W 4140 was a duplication of the drilling charges shown on our Bill #W 4035, and that this error will be corrected on our September statement.

Yours truly,

/s/ J. P. SUTTON,

Assistant Treasurer.

HHW:EN [324]

Plaintiff's Exhibit 9

Dec. 1, 1924.

Mr. J. P. Sutton, Ass't Treas.,
The Ohio Oil Company,
Findlay, Ohio.

Dear Mr. Sutton:

Your attention is called to your bill W-4283, dated September 30th, 1924. The Ohio Oil Company to the Inland Empire Oil & Gas Syndicate.

1,759.27 Bbls. of oil @ .90c.....\$1,421.34

Should be.....\$1,583.34

Very truly yours,

President. [325]

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

Plaintiff's Exhibit 10

The Ohio Oil Co.

Findlay, Ohio

December 5, 1924.

Producing Department,
J. P. Sutton, Asst. Treas.
Inland Empire Oil & Gas Co.,
Shelby, Montana.

Gentlemen:

We wish to acknowledge receipt of your letter of December 1, in which you called our attention to the extension of oil credits shown on our bill W-4283, dated September 30, 1924.

We wish to advise that this bill should have read 1579.27 barrels @ 90c, instead of 1759.27 barrels @ 90c.

Yours very truly,

/s/ J. P. SUTTON,

Assistant Treasurer.

HHW:MR [326]

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

Plaintiff's Exhibit 11

Jan. 30, 1924.

Mr. F. E. Hurley, Vice-President,
The Ohio Oil Co.,
Findlay, Ohio.

Dear Mr. Hurley:

In making up our income tax returns and placing valuations for future returns, we are “-in so far as we are able to ascertain from the advise of our attorneys and the several federal agents from whom we have got an opinion,” entitled to the privilege given by the Government, of placing a revaluation for future income tax return purposes, on our interest in the Baker lease, or that part of it which would come within the 160 acres that would be allowed as a discovery.

In the case of the Baker lease “ie” the SW $\frac{1}{4}$ of Sec-3. SE $\frac{1}{4}$ of Sec-4. Twp 35-N-R-2-W, MM. Toole County, Montana, our understanding is that the bringing in of the Mid-Northern well #1 in Sept. 1922, would be allowable as a discovery well, and this well as an off-set to the Baker lease would establish approximately 80 acres or the S $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Sec-4 as within the discovery area, and those holding an interest in the 80 acres prior to the bringing in of the discovery well are permitted by the Government to set up a revaluation for future income purposes.

In anticipation that the Baker lease may in the

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

future pay goodly returns, we want to take advantage of any privileges the Government may grant. If we are correctly informed as to [327] the above, your Company undoubtedly has, or will, take advantage of it, and we are asking if you will—to advise us what valuation on your Company has placed on this land, that we may turn in the same valuation.

This will not require detail or clerical work, if your Company has revalued the land; just the amount of the revaluation, so that we may arrive at a valuation on our proportion of the lease that will conform to your valuation. In making our return we will “with your permission” sight the Government to the Ohio Oil Co.’s valuation in meeting their requirements as to how we arrived at a valuation on the lease.

Very truly yours,

INLAND EMPIRE OIL & GAS
SYNDICATE,

By.....,
President. [328]

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

Plaintiff's Exhibit 13

January 23, 1925.

The Ohio Oil Company,
Findlay, Ohio.

Dear Sirs:

In your November statement, Bill No. W4581, you have the following entry: "In full for 1924 taxes on Royalties, I. H. Baker, 30 acres in Secs. 3 and 4, 35-2, \$76,714.00 @ 48.4 mills, 3,712.96," on which you charge us 22½%, or \$835.41.

We find from the records of the Toole County Treasurer that the State Board of Equalization certified to said County Treasurer from returns made by you to the State Board of Equalization on Net Proceeds of oil from the Baker farm as follows:

Ohio Oil Company.....	\$76,713.38
Potlatch Oil & Refining Co.....	17,913.38
Inland Empire Oil & Gas Synd..	37,233.86

We have been assessed on the above return of \$37,233.86 @ 48.4 mills the sum of \$1,802.14, and now you charge us an additional amount of \$835.41.

We are unable to fathom how you can charge us 22½% of your own net income tax, and desire an explanation.

Neither are we able to figure how you can make a return for us as to our net income, as we have a capital investment in the lease and you do not. We

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

presumed this was a matter for us to attend to ourselves.

Very truly yours,

R. E. WILSON,
President. [329]

Inland Empire Oil & Gas Syndicate
A Common Law Trust
Shelby, Montana

Jan. 28, 1925.

The Ohio Oil Company,
Shelby, Montana.

Gentlemen:

Please furnish us with a copy of the charges and credits against the Baker lease, as they come from your field office. Please start these copies from Jan. 1, 1925.

Very truly yours,

INLAND EMPIRE OIL & GAS
SYNDICATE,

/s/ R. E. WILSON,
President. [330]

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

Potlatch Oil & Refining Company

A Corporation

Offices: First National Bank Building

T. P. Jones, President

J. A. Harsh, Secretary

Directors:

W. J. Ball,

C. W. Craney,

A. E. Douglas,

J. A. Harsh,

T. P. Jones.

Shelby, Montana,

Jan. 28, 1925.

The Ohio Oil Company,

Shelby, Montana.

Gentlemen:

Please furnish us with a copy of the charges and credits, as they come from your field office, against the leases in which we are jointly interested with the Ohio Oil Company. Please start these copies from Jan. 1, 1925.

Very truly yours,

POTLATCH OIL & REFINING
COMPANY,

/s/ T. P. JONES,

President. [331]

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

Plaintiff's Exhibit 15

The Ohio Oil Co.

Shelby, Montana

February 9, 1925.

Inland Empire Oil & Gas Syndicate,
Shelby, Montana.

Mr. R. E. Wilson.

Gentlemen:

Your letter of January 28th, received, asking us for a copy of our field charges and credits against the Baker lease.

I believe that Findlay issues you a statement on about the first of every month, of all, of this business that is done on the lease. If we were to make you a copy of all the transfers that are made, it would necessitate the aid of another bookkeeper in our Shelby Office. And we are trying to avoid all unnecessary expenses that we can.

As we do not make the pricing of the material in this Office, I do not think it would be of much assistance to you. If you would stop in the Office some time when it is convenient to you we will explain how we handle this business. Also at any time you wish to examine any of the transfers you are at perfect liberty to do so.

Hoping this will be satisfactory to you, I remain,

Yours very truly,

/s/ L. J. YEALY. [332]

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

The Ohio Oil Co.

Findlay, Ohio

January 28, 1925.

Producing Department,
J. P. Sutton, Asst. Treas.
Potlatch Oil & Refining Co.,
Shelby, Montana.

Gentlemen: Attention J. A. Harsh, Sec'y. Treas.

We have your letter of January 23, in which you advise that you have paid taxes in the amount of \$867.02 on an assessment of \$17,913.38, representing your portion of the net proceeds from the Irvin H. Baker farm. We wish to advise that the assessment of \$76,713.38 covered the 100% of the net proceeds from the I. H. Baker farm; and the payment which you have made is a duplication of the payment made by the Ohio Oil Company.

We have, therefore, requested the State of Montana to refund us \$867.02, covering the amount of taxes which you have paid for your portion of the net proceeds on the Irvin H. Baker farm. As soon as we receive a reply from the State, we will advise you accordingly.

Yours very truly,

/s/ J. P. SUTTON,

Assistant Treasurer.

HHw:MR [333]

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

Plaintiff's Exhibit 18

Jan. 28, 1925.

The Ohio Oil Company,
Findlay, Ohio.

Gentlemen:

We are enclosing a summary sheet of the charges and credits taken from your statements to us covering the costs of I. H. Baker Well #I. Sec-4. 35-2W. This well was drilled as a free well to the Inland Empire Oil & Gas Syndicate, and the Potlatch Oil & Refining Co., in lieu of the drilling by the Ohio Oil Company of a free well on the Heskin lease in Sec. 25-36-2W.

We have listed the items charged and for which there is no credit in your statement of September, 1923, and have also listed the credits given in your statement of September, 1923, for which we find no charges.

The balance due us from the well #1. account as checked from your statements is \$1,346.30.

Very truly yours,

INLAND EMPIRE OIL & GAS
SYNDICATE,

President. [334]

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

Plaintiff's Exhibit 18-A

I. H. Baker Well # 1. Sec-4 35-2W Ohio Oil Co: Statements.

Items charged and not credited:

October, 1922	Gross	22½%
140' of 8" Casing @1.54.....	215.60	48.51
Small fittings.....	17.64	3.97
1 250 Bbl Tank.....	258.50	58.16
1334'4" of 2" Gas line pipe @ .20.....	266.87	
2449'5" of 2" Gas line pipe @ .15.....	412.03	152.75
	<hr/> 1,170.64	<hr/> 263.39

January, 1923

Trucking: Gasing and Tubing.....	98.00	22.08
Labor at Tanks.....	12.00	2.70
	<hr/> 110.00	<hr/> 24.78

April, 1923

Drilling 1682' 2.00.....	2,364.00	
(Note error of \$1,000 on Gross)		
Clean, Swab, and run Casing 7 days.....	217.00	805.72
(Note 22½% is charged on 3,581.00).....	2,581.00	805.72

Items credited for which no charges can be found:

September, 1923—Bill—W2985

Trucking Miscel-Rig	108.50	24.21
Trucking Forge House	35.00	7.87
Trucking Water	10.50	2.37
Trucking Miscel	49.00	11.03
Trucking Tubing	35.00	7.87
Trucking Casing	14.00	3.15
10'8" of 8½" Casing @ 1.31.....	23.69	5.33
	<hr/> 275.69	<hr/> 61.83

Items charged and not credited

(Not included above)

November, 1922

Small fittings	2.63	.59
21'5" of 6½" casing @ 1.14.....	24.42	5.50
Laying pipe line #1 ½ da @ 4.00.....	2.00	.45
	<hr/> 29.05	<hr/> 6.14

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

	Gross	22½%
October, 1922, charges on our 22½% interest....	263.39	
10% overhead.....	26.34	
8% interest Nov. 1, 1922 to Feb. 1, 1925.....	52.14	341.87
November, 1922.....	29.05	
8% interest Dec. 1, 1922.....	5.75	
10% overhead.....	2.90	37.70
January, 1923.....	24.78	
10% overhead.....	2.48	
8% interest Feb. 1, 1923, to 2/1/1925.....	4.36	31.62
April, 1923	805.72	
10% overhead.....	80.57	
8% interest May 1, 1923 to 2/1/1925.....	124.08	1,010.37

Sheet #2

I. H. Baker Well #1. Sec-4. 35-2W	Gross	22½%
October, 1922, Total charges.....	341.87	
November, 1922, Total charges.....	37.70	
January, 1923, Total charges.....	31.62	
April, 1923, Total charges.....	1,010.37	
	1,421.56	
September, 1923, credits on our 22½% int.....	61.83	
10% overhead.....	6.18	
8% interest 10/1/1923 to 2/1/1925.....	7.25	75.26
Chgd to Ohio Oil Co. Acct, Acct. Baker Well #1.....		1,346.30

Plaintiff's Exhibit 19

Jan. 28, 1925.

The Ohio Oil Company,
Findlay, Ohio.

Gentlemen:

We are enclosing a summary sheet of the charges and credits taken from your statements to us covering the costs of I. H. Baker Well #I. Sec-4. 35-2W. This well was drilled as a free well to the Potlatch Oil & Refining Company and the Inland Empire

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

Oil & Gas Syndicate, in lieu of the drilling by the Ohio Oil Company of a free well on the Heskin lease in Sec-25, 36-2W.

We have listed the items charged and for which there is no credit in your statement of September, 1923, and have also listed the credits given in your statement of September, 1923, for which we find no charges.

The balance due us from the well #I. account as checked from your statements is \$1,346.30.

Very truly yours,

POTLATCH OIL & REFINING
COMPANY,

President. [337]

Plaintiff's Exhibit 20

The Ohio Oil Co.
Findlay, Ohio

February 3, 1925.

Producing Department,
J. P. Sutton, Asst. Treas.
Inland Empire Oil & Gas Syndicate,
Shelby, Montana.

Attention: R. E. Wilson, President.

Gentlemen:

We acknowledge receipt of your letter of January 28, in which you enclosed a statement in the amount

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

of \$1,346.30 which you advise is the balance due for Well #1 on the Irvin H. Baker farm. Referring to this statement, we wish to make the following explanation for each item shown on same.

October 1922—The 140' of 8 $\frac{1}{4}$ " Casing is charged to the I. H. Baker Water Well instead of I. H. Baker Well #1. The small fittings, 1-250 barrel tank, the 1334'4" of 2" Gas line pipe and 2449'5" of 2" gas line pipe is surface equipment on this farm, which is a proper charge to your account, as, according to the contract. The Ohio Oil Company was to only stand the cost of drilling and furnish casing necessary to drill this well to the first productive sand.

January 1923—Trucking Casing and Tubing. We wish to advise that this charge was reversed on our September, 1923, statement. Labor on Tanks—This is a surface equipment charge and therefore a legitimate charge to your account.

April, 1923—The charge to Well #1 for drilling 1682' shown on our statement was a typographical error. This drilling [338] should have been charged to Well #3. The \$1,000.00 error in gross was another typographical error on this statement. Our charge, then of 22 $\frac{1}{2}$ % of \$3,581.00 as shown on this statement was correct.

September, 1923—The charge for the credits listed on your statement will be found on our bills as follows:

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

Trucking Miscellaneous Rig. Oct., 1923 Bill
Trucking Forge House. Oct., 1922 Bill
Trucking Water. Jan., 1923 Bill
Trucking Miscellaneous. Jan., 1923 Bill
Trucking Tubing. Jan., 1923 Bill
Trucking Basing. Jan., 1923 Bill
10'8" of 8¼ Casing. Jan., 1923 Bill

November, 1922—The small fittings is a surface equipment charge; the 21'5" of 6⅝" casing is charged to the stock account on the farm, which are legitimate charges to your account. The charge for laying pipe line, ½ days at \$4.00 per day was reversed on our September, 1923, statement.

Yours very truly,

/s/ J. P. SUTTON,

Assistant Treasurer.

HHW:MR [339]

Plaintiff's Exhibit 21

Feb. 9, 1925.

The Ohio Oil Company,
Findlay, Ohio.

Attention J. P. Sutton, Ass't Treas.

Gentlemen:

We are in receipt of your letter of February 3, covering our statement as a balance due on Well #1 on the Irving H. Baker farm. The items in the order as listed by you are as follows:

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

October, 1922—The 140' of 8" casing, we have credited this on the Well #1 account and have charged it to the Water Well. The 1334'4" and 2449'5" of 2" line pipe, small fittings, and 1-250 barrel tank used in connection with the drilling of Well #1 we are leaving as a charge against the Well #1 account, in addition to this 2" line pipe there is 14912' of 2" line pipe charged to the lease from which a credit is due. The tank and small fittings were used in the drilling of Well #1. We are attaching a statement of the Tank account which will show you the standing of that account. In connection with the line-pipe account we find on the Potlatch Oil & Refining Companies statement from the Ohio Oil Co. under date of November 29, 1924—Bill No. W-4575—a charge for oil line labor of \$8.50 and a credit for 4778' of 3" water line that is not entered on the statement to us.

January, 1923. Trucking Casing and Tubing, we wish to advise that we have not yet found where this charge is reversed [340] on the September, 1923, statement. Labor on Tanks—is charged in your statement to Well #1.

April 23—The charges and credits for drilling Wells #1 and #3 appear on your statements as follows:

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

Well #1 Jan., 1923, Clean out Pull & Run		
Casing & Tubing 20 days @ 50.00.....	1,000.00	225.00
Well #1 Jan., 1923, Drilling—Sonhio tools		
1848' @2.00	3,697.00	831.83
Well #1 Apr., 1923, Drilling 1682' @ 2.00.....	2,364.00	
Well #1 Apr., 1923, P & R Casing etc.....	217.00	805.72
Well #1 July, 1923, Drilling 1698'6" @ 2.00....	3,397.00	764.33
Well #1 Credits:		
Sept., 1923, P&R Casing 20 days @ 50.00.....	1,000.00	225.00
Sept., 1923, Drilling 1848' @ 2.00.....	3,697.00	831.82
Sept., 1923, Drilling 1698'6".....	3,397.00	764.33
Well #3 Charged:		
Mar., 1923, P&R Casing etc.....	350.00	
Mar., 1923, Drilling 1682' @ 2.00.....	3,364.00	835.65

In April, 1923, you have 1682' of drilling charge against Well #1, with a charge of \$217.00 for pulling and running casing, according to your letter this should have been charged to Well #3, your March, 1923, statement shows a charge against Well #3 for drilling 1682' with a charge of \$350.00 for pulling and running casing.

September, 1923—Items we credited for which we had found no charge. Trucking Miscellaneous, we find a credit for this but no charge and are leaving it as a credit to Well [341] #1 account. Trucking Tubing and Casing, we had this charged in error to Well #2, and have found offsetting charges for Trucking Miscel and Forge house. Trucking water is charged on your statement to Well #2. We note that the 10'8" of 8" Casing and 21'5" of 6 $\frac{5}{8}$ " Casing is charged to the farm stock account.

Very truly yours,

President. [342]

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

Plaintiff's Exhibit 21-A

I. H. Baker Farm—Tanks						Balance of Tanks on Lease
January	1923	6	250 BB1 Tanks Charged.....			6
February	"	1	"	"	"	7
March	"	1	"	"	"	8
April	"	4	"	"	"	12
May	"	8	"	"	"	
May	"	1	"	"	Credited.....	19
June	"	2	"	"	"	17
July	"	3	"	"	Charged.....	20
July	"	4	"	"	Credited.....	16
August	"	8	"	"	Charged.....	
August	"	1	"	"	Credited.....	23
September	"	1	"	"	Charged.....	24
October	"	2	"	"	"	26
May	1924	1	"	"	Credited.....	25
June	"	2	"	"	"	23
July	"	3	"	"	"	20
August	"	1	"	"	"	19
October	"	1	"	"	"	18
November	"	1	"	"	"	17

1—250 BB1 Tank charged to Well #1 in November, 1922, not included in the above. Total—18 tanks. Tanks on lease April 10, 1924—20. Charged to lease 27.

Tanks on lease May 24, 1924—16. Charged to lease 26. [343]

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

Plaintiff's Exhibit 22

The Ohio Oil Co.

Findlay, Ohio

Producing Department,
J. P. Sutton, Asst. Treas.

February 17, 1925.

Inland Empire Oil & Gas Syndicate,
Shelby, Montana.

Attention: R. E. Wilson, President.

Gentlemen:

Replying to your letter of February 9th, which is in reply to our letter of February 3rd, we wish to advise as follows:

The charge for oil line labor and the credit for 3" water line pipe shown on our bill W-4775, dated November 29, 1924, against the Potlatch Oil & Refining Company are charged and credited to the I. Sindon Farm. On account of you having no interest in this farm this charge and credit were not shown on your statement.

For the following credits shown on our bill W-2985, dated September, 1923, Miscellaneous Trucking—\$49.00; Trucking on Tubing—\$35.00—Trucking on Casing—\$14.00, you will find the charges listed on our bill W-2369, dated January 31, 1923, against the Troy-Sweetgrass Oil Syndicate, under Cost of Wells page #2 as follows:

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

Pipe Teaming & Trucking I. H. Baker—8¼"—Well #1	
Hauling Pipe, 4 hrs. @ \$3.50.....	\$14.00
Hauling Tubing.....	35.00
Miscellaneous Teaming & Trucking—Well #3	
Hauling manure for head line, 10 hrs. @ \$3.50.....	\$35.00
Hauling junk casing to Camp, 4 hrs. @ \$3.50.....	14.00
Total	<u>\$49.00</u>

In regard to the drilling charges for Well #3, we wish [344] to advise that the following charges on our March statement covered charges for use of our Drilling Tools:

Pulling and Running Casing, etc.....	\$ 350.00
Drilling 1682' @ \$2.00.....	3,364.00

and the following charge to Well #3 on our April statement covers the amount of money paid the labor contractor for drilling this well:

Drilling 1682' @ \$2.00.....	\$3,364.00
Pulling and Running Casing.....	217.00

In regard to the Tank statement which you attached to your letter, we wish to advise that according to our inventory for Tanks on this farm December 31, 1924, this report shows that there are 18 Tanks in use on this farm which agrees with the total number of tanks charged to your account as per your statement.

Yours very truly,

/s/ J. P. SUTTON,

Assistant Treasurer.

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

Plaintiff's Exhibit No. 23

May 11, 1925.

Ohio Oil Company,
Findlay, Ohio.

Gentlemen:

On the first of this month we received your March statement covering our interest in the Irving H. Baker lease, your check for the credit balance shown was not enclosed with the statement.

Kindly look this up, and if the check has been mailed please have it traced from your office.

Very truly yours,

INLAND EMPIRE OIL & GAS
SYNDICATE,

President. [346]

Plaintiff's Exhibit 24

The Ohio Oil Co.
Findlay, Ohio

May 28, 1925.

Mr. R. E. Wilson, President,
Inland Empire Oil & Gas Syndicate.

Dear Sir:

We are in receipt of your letter of May 11th calling attention to the fact that a check did not accompany our March statement rendered your

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

company. In explanation I wish to advise you that sometime ago it became necessary to charge to the various farms which we operate in the Sunburst field the investment and expense of the water lines serving these properties, which had heretofore been carried in the water line account. The Inland Empire Oil & Gas Syndicate's proportion of this investment and expense totals approximately \$4,900.00 and for that reason a check was not forwarded to you for the credit balance as shown on the March statement. We are preparing an itemized statement accounting for your company's proportion of these charges which will go forward to you in the near future.

A check in settlement of your April credit balance is being mailed today.

Yours truly,

/s/ F. A. BILLSTONE.

EBR:wy [347]

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

Freeman, Thelen & Frary
Attorneys at Law
12-16 Conrad Bank Building
Great Falls, Montana

James W. Freeman
John N. Thelen
Gerald S. Frary

Shelby, Montana,
July 17, 1925.

J. P. Freeman
Ohio Oil Company,
Findlay, Ohio

Gentlemen:

We have been retained by the Potlatch Oil and Refining Company, and the Inland Empire Company, of Shelby, Mont., in connection with a certain operating agreement that your Company has with these Companies, whereby and by which your Company is drilling upon certain acreage formerly belonging to or in which our Companies have an interest.

We understand that our clients have made various objections from time to time, to your mode of rendering an account and to the charges made by your Company in connection with the operation of said leases. We are of the opinion that quite a number of your charges are unjust and unreasonable, and unwarranted under the terms and con-

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

ditions of the contract. However, your Company and our firm have always been on friendly terms and we thought that it might be to the best interests of all concerned if we could go over these contracts and your charges and see if some adjustment could not be made, satisfactory to our clients. [348]

We are very sure that your Company wants to do what is right and it might just be possible that some of the charges made, to which our Companies are objecting, have been made without special knowledge to your company and matters might be talked over and adjusted, without any feeling and in a friendly manner. We, therefore, would be pleased if you would so arrange it, that we would have a conference with your Company or your legal representatives, so as to get these matters straightened out. We trust that this can be done, otherwise we would have to take such action as we deemed necessary to protect our clients.

We might say further, that we wish especially to call your attention, at this time, to your so-called "Detailed Adjustment Statement" with reference to your Sunhio Water Plant. Our Companies have just recently received this statement, and we understand that you are holding up certain moneys due our Companies, and charging our Companies with certain expenses incurred in connection with your Sunhio Water Plant.

We wish to notify you on behalf of our Companies, and this shall be notice to you, that we

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

disclaim any interest in your Sunhio Water Plant. We have never agreed to enter into any private water arrangement with your Company, or anyone else, and our clients are not interested in your Water Plant, and do not now care to be so interested. We, of course, cannot see under what theory you can charge our Companies with this [349] expense and we will ask that you refrain from making any such deductions and that the moneys due our Companies be paid without unnecessary delay.

As above stated, we believe that all of these matters can be adjusted, if all parties concerned get together and discuss them across the table. At any rate, we believe that this should be done before the matter reaches a more serious stage, so, we certainly believe that some arrangements should be made along this line. However, if this suggestion is not acceptable to you, kindly let us know, and we shall then take the matter into court, to have it determined there.

We would appreciate very much if you would acknowledge this letter at your earliest convenience.

Yours very truly,

FREEMAN, THELEN &
FRARY,

By /s/ J. N. THELEN.

JNT.M [350]

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

July 21, 1925.

Freeman, Thelen & Frary,
Attorneys at Law,
12-16 Conrad Bank Building,
Great Falls, Montana.

Gentlemen:

By reference I have your letter of July 17th addressed to The Ohio Oil Company in behalf of your clients, the Potlatch Oil & Refining Company and the Inland Empire Company, concerning the charges made in connection with the operation for oil and gas on certain properties in which your clients are interested.

We appreciate the spirit of your letter in suggesting that the matters of difference be frankly discussed. While we feel that the charges were carefully prepared and are entirely justified, representatives of the company will be glad to meet you and discuss with you fully and frankly any items your companies are complaining of. To that end, I am sending a copy of your letter to Mr. F. B. Firman, the Cashier of the company at Casper, Wyoming, who is familiar with the entire matter, and I am suggesting that he arrange a conference

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)
with you at such time and place as may be found
mutually agreeable.

Yours truly,

MERLE N. POE,
General Counsel.

(Signed in Pencil—Carbon Copy.)

MNP:IR [351]

The Ohio Oil Co.
Findlay, Ohio

Producing Department,
J. P. Sutton, Asst. Treas.

October 9, 1924.

Potlatch Oil & Refining Co.
Shelby, Montana.

Gentlemen:

We acknowledge receipt of your letter of October 6, in which you call our attention to drilling charges against the Baker Well No. 9 on our August statement.

We wish to advise that these charges were in error and same will be corrected on our September statement.

Yours truly,

/s/ J. P. SUTTON,
Assistant Treasurer.

HHW:EN [352]

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

The Ohio Oil Co.

Casper, Wyoming

January 15, 1941.

Potlatch Oil & Refining Company,
Shelby, Montana.

Gentlemen:

We have copy of your letter of January 9 concerning 1500 ft. of 2" junk pipe.

It is possible that 500 ft. of the pile of this so-called junk pipe could be used for light field purposes, and, if so, it would have a resale value of about 10c per foot. Considering this value in connection with the value of the junk pipe which could not be used for light field use, this would give a possible total value of \$60.00 for the entire 1500 ft.

If you are interested in this pipe and will take the entire batch off our hands at \$60.00, we would be willing to make the sale to you instead of trying to sell it to a junk dealer. In this case, would you please get in touch with Mr. Fredell who could handle the sale to you.

If the sale is made, we will, of course, revise the credit to the part interests under the Baker lease

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

to make it correspond to the actual price received for the pipe.

Yours very truly,

J. A. LEE,
Cashier.

JAL:cmb [353]

The Ohio Oil Co.
Findlay, Ohio

January 14, 1941.

Potlatch Oil & Refining Company,
First National Bank Building,
Shelby, Montana.

Gentlemen:

This is in answer to your letter dated January 9th requesting information as to the possibility of your purchasing 1500 feet of junk line pipe, also calling our attention to error in calculation of interest on our bill to the Inland Empire Oil & Gas Syndicate No. W-463.

With reference to the junk pipe, we are referring this question to our Casper office for consideration and you no doubt will hear from the management there within a few days.

We find the interest charge on the Inland Empire Oil & Gas Syndicate's bill to be in error as you state. Correction of 37c will be made on our next

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

billing. We thank you for calling this matter to our attention.

Yours truly,

/s/ W. J. SHEEHAN,
W. J. SHEEHAN.

WJS:M

cc J A Lee [354]

January 9, 1941.

The Ohio Oil Company,
Findlay, Ohio,
Casper, Wyoming.

Gentlemen:

Referring to Potlatch Oil & Refining Company statement W 468-40 dated November 30, 1940, and to Inland Empire Oil & Gas Syndicate statement W463-40 of same date.

We note the item of expense, viz "Credit for 1500 ft. 2" lead line pipe junked" .O1CR. We are in the market for some old pipe of this description and since the above 1500 feet of lead line is apparently of no value to the Ohio Oil Company, we should like to buy it from you. We approached your Superintendent here, Mr. Jack Fredell, in regard to the matter and he suggested that we should write to you. We will pay you 1c a foot for this junked pipe or \$15.00 for the 1500 ft.

On the Inland Empire Oil & Gas Syndicate statement, W 463-40, we note total interest charges in

(Testimony of Jean P. Gerlough.)

Plaintiffs' Exhibit O—(Continued)

the amount of \$6.29. This apparently is an error as the interest should be \$5.92, and the net credit for the month should be \$71.95 instead of \$71.58.

Very truly yours,

POTLATCH OIL & REFINING COMPANY,
INLAND EMPIRE OIL & GAS SYNDI-
CATE

Mgr.

(Carbon Copy.) [355]

December 3, 1938.

The Ohio Oil Company,
Casper, Wyoming.

Gentlemen:

Referring to your statement W-422-38 covering operations on the Baker & I. Sindon leases for October, 1938, and in particular to those items entitled "Closing Our Warehouse Stock to Farms In District" and "Closing out Sunburst Stock Account to Farms in District."

It is evident from the statement that you have charged each farm with its proportionate share of the materials and equipment in the warehouse and Sunburst Stock accounts according to the number of wells on each farm. However, we fail to understand the reason for making these charges. Are we to understand that each farm is to be charged with a lot of equipment and supplies before they

(Testimony of Jean P. Gerlough.)

Plaintiff's Exhibit O—(Continued)

are used and whether said equipment and supplies can be used on the respective farms or not.

We failed to get much enlightenment on this subject at your Shelby Office, and would appreciate an explanation of the above-mentioned charges from your office.

Very truly yours,

POTLATCH OIL & REFINING
COMPANY,

Mgr.

(Carbon Copy.) [356]

The Ohio Oil Co.

Findlay, Ohio

C. W. Roberts,

Assistant Treasurer.

December 21, 1938.

File: 683-38

Potlatch Oil & Refining Company,

First National Bank Building,

Shelby, Montana.

Attention of Mr. Jean P. Gerlough, Manager.

Gentlemen:

This is in answer to your letter of December 3 with reference to our joint interest bill W-422, particularly items entitled "Closing Our Warehouse Stock to Farms in District" and "Closing out Sunburst Stock Account to Farms in District."

(Testimony of Jean P. Gerlough.)

Plaintiff's Exhibit O—(Continued)

A survey of our warehouses disclosed that too much clerical work was being expended in accounting for the operations, and, as of October 1, we discontinued warehouse accounting. The amount of \$1,892.65 and the amount of \$899.72 appearing on our bill, with detail schedules attached, have been charged as expense items to the various leases formerly served by the warehouse. There will be no subsequent transfers issued for this material when used. At the time it is completely absorbed and additional purchases become necessary, such purchases will be charged direct to expense from the invoice.

Our purpose in making these changes in our accounting methods is to eliminate unnecessary expense and, in addition, to relieve us of a lot of trouble with the Federal Bureau of Income Tax. We feel that over a period of time a substantial saving in operation of the properties will [357] result.

If you have any further questions, please write us.

Yours truly,

/s/ C. W. ROBERTS.

CWR:HCM

CC: Mr. J. A. Lee, Casper. [358]

(Testimony of Jean P. Gerlough.)

Plaintiff's Exhibit O—(Continued)

January 28, 1938.

The Ohio Oil Company,
Findlay, Ohio.

Gentlemen:

We wish to call your attention to the credit item for 3-inch tubing on our statements dated November 30, 1937, Bill Nos. W 488-37 and W 482-37 respectively.

This item credits the I. Baker lease back with 1680 feet of 3-inch common tubing in the amount of \$201.60 or at the rate of only 12c a foot. The going price for second hand 3-inch tubing and line pipe in this field runs between 25c and 30c per foot. Some pipe in extra good condition commands prices even higher than that, but we do not know of any second hand 3-inch pipe in the field that can be bought for less than 25c a foot. We recently purchased some ourselves that was not as good as the tubing removed from the Baker lease and we had to pay 29c a foot for it.

It is our desire, therefore, that an adjustment be made of the above credit item. We offered to buy the above string of tubing from The Ohio Oil Company here and the price we were asked was 25c a foot for it. For this reason, we are of the opinion that the Baker lease should be credited with an additional 13c a foot for the above-mentioned string of tubing.

(Testimony of Jean P. Gerlough.)

Plaintiff's Exhibit O—(Continued)

Trusting that such an adjustment will meet with your approval, we remain,

Very truly yours,

POTLATCH OIL & REFINING COMPANY,
INLAND EMPIRE OIL & GAS SYNDI-
CATE

By.....,

Mgr.

(Carbon Copy.) [359]

The Ohio Oil Co.

Casper, Wyoming

February 17, 1938.

Potlatch Oil and Refining Company,
Shelby, Montana.

Gentlemen:

Your letter of January 28 addressed to The Ohio Oil Company, Findlay, Ohio, has been referred to this office for reply, this letter having to do with credit item for 3" tubing allowed you on your November bills No. W-488-37 and No. W-482-37, respectively.

This matter has been taken up with our Mr. Yealy and we now find that the pricing on these transfers of 12c in this office was in error and the correct price should have been 25c, and we are advising our General Office to this effect, and you

(Testimony of Jean P. Gerlough.)

Plaintiff's Exhibit O—(Continued)

may look for additional credit in the amount of 13c per foot on our next part-interest bill to you.

Very truly yours,

/s/ J. A. LEE.

NLB:DC [360]

The Ohio Oil Co.

Casper, Wyoming

June 1, 1936.

Mr. Gene P. Gerlough, Treasurer,
Potlatch Oil & Refining Company,
First National Bank Building,
Shelby, Montana.

Dear Mr. Gerlough:

Our general office in Findlay has forwarded your valued inquiry of May 20th to us for reply. Accordingly I have today addressed a letter to our Mr. McCracken at Shelby and you may expect a call from him shortly. I am sure that Mr. McCracken will be able to satisfactorily answer any questions which you may have.

With personal regards, I am

Sincerely yours,

/s/ L. M. KIPLINGER.

(Testimony of Jean P. Gerlough.)

Plaintiff's Exhibit O—(Continued)

Potlatch Oil & Refining Company

A Corporation

Offices: First National Bank Building

Shelby, Montana

Mr. L. M. Kiplinger,
The Ohio Oil Company,
Casper, Wyoming.

Dear Mr. Kiplinger:

I have your letter dated June 1, 1936.

In reply, I might say that before I wrote the general office of the Ohio Oil Company at Findlay, I had called on Mr. Yealey and Mr. McCracken here and discussed the item Sunburst District Expense which was appearing on our statements and they seemed unable to explain why this change had been made in the auto and trucking charges.

After receiving your letter, I again called upon Mr. Yealey and Mr. McCracken at the Shelby office of the Ohio Oil Company and they seemed unable to shed any further light upon the matter. It would appear from their conversation that they have absolutely nothing to do with the way these operating charges are set forth or distributed upon the monthly financial statements which we receive. Consequently, I have not yet had any satisfactory answer to the question as to why the Ohio Oil Company ceased charging actual auto and trucking expense

(Testimony of Jean P. Gerlough.)

Plaintiff's Exhibit O—(Continued)

to the Baker lease and in place of this item on the statement introduced the item Sunburst District Expense which included all the auto, trucking and camp expense of the field and then pro rated same according to the number of producing wells. The result of this new distribution has been that [362] the Baker lease is now paying about three times as much for auto and trucking as it has any time during the past five years when operations have been just about on a par with present operations on the lease.

I wish to call attention to the fact that we are not liable for expense of operation other than that actually incurred on the Baker lease. Our contract states that specifically, and frankly, we cannot see why the Baker lease should be made to bear more than its own share of any operating expense. Under the plan of distribution of auto, trucking and camp expense which you call Sunburst District Expense there is little question but that the poorer leases of the Ohio Oil Co.—those having little or no production—are being carried along by the leases having a large number of wells such as the Baker. We object to paying more than our actual share of this expense since we have no interest whatever in lands

(Testimony of Jean P. Gerlough.)

Plaintiff's Exhibit O—(Continued)

or leases of the Ohio Oil Company other than the ones named in our contract.

Very truly yours,

POTLATCH OIL & REFINING
Co.

INLAND EMPIRE OIL & GAS
SYNDICATE,

/s/ JEAN P. GERLOUGH,
Treas. [363]

The Ohio Oil Co.
Casper, Wyoming

July 1, 1936.

Mr. Gene P. Gerlough, Treasurer,
Potlatch Oil & Refining Company,
First National Bank Building,
Shelby, Montana,

Dear Mr. Gerlough:

Since the receipt of your letter of June 9th I have made further investigation of the matter of charges for services of our pick-up trucks and have just lately conferred with other operating companies in order to learn what system is used by other companies in making such charges.

I find that it is the experience of all that the well basis is the only practical method by which such general charges can be properly allocated to

(Testimony of Jean P. Gerlough.)

Plaintiff's Exhibit O—(Continued)

the various leases served. It is impossible to determine each day just how much work may be allocated to each lease. It would be uneconomical, of course, to assign a truck to each lease. The pick-up trucks carry men to the work often starting from a central point and delivering a man or two to various leases. Materials and supplies are also delivered in the same manner. It would be foolish to try to ask the driver of the pick-up to make proper segregation of services rendered various leases. Consequently, we can only prorate such charges on the well basis.

I have given thought to other methods which might be used such as proration on the basis of the number of barrels of oil produced. This, as you can readily see, would work a decided hardship on the Baker lease and would not be fair. [364]

In your particular case I feel that it is not a case of your being overcharged at this time but rather that through circumstances you were undercharged over a considerable period of time. During the time that the field was being prorated, the Condition of Operations reports coming from the Shelby office indicated that the proportion of wells producing on the Baker lease compared to the total wells in the field (operated by Ohio) was as follows:

(Testimony of Jean P. Gerlough.)

Plaintiff's Exhibit O—(Continued)

		Wells	
Year	Producing on	Total Ohio	
1935 and 1936	Baker Lease	Wells Producing	
January, 1935	3	34	
February	3	34	
March	3	35	
April	3	35	
May	3	35	
June	6	48	
July	1	32	
August	1	32	
September	4	42	
October	4	42	
November	14	53	
December	14	54	
January, 1936	14	54	
February	14	54	
March	14	54	
April	14	54	
May	14	54	

From the foregoing you can readily see that the percentage during most of 1935 charged against the Baker lease was far out of line being much less than the services rendered to the lease. We realize that the circumstances were peculiar because on the Baker lease, the large well was able to produce the share of oil allocated to the lease. However, the actual expense of operating the lease was not reduced in as great a [365] proportion as the charges were reduced.

(Testimony of Jean P. Gerlough.)

Plaintiff's Exhibit O—(Continued)

I am sorry that Mr. McCracken failed to make this matter clear to you and stated that they had absolutely nothing to do with the way these operating charges are made because the basis of distributing these charges is information furnished entirely by the Shelby office.

I hope that I have made the matter clear. There has been no change in our method of distributing the charges and as I have pointed out, the method which we follow is the usual and customary method throughout the industry. We believe that it is fair and that in your particular case the circumstances have worked to your advantage and our disadvantage throughout the year 1935.

I do not know what else I can add to this letter but I will appreciate any further questions which you may have in the matter.

Yours very truly,

/s/ L. M. KIPLINGER.

LMK/ljs

cc-V. B. McCracken [366]

(Testimony of Jean P. Gerlough.)

Plaintiff's Exhibit O—(Continued)

Potlatch Oil & Refining Company

A Corporation

Offices: First National Bank Building

Shelby, Montana

May 20, 1936.

The Ohio Oil Company,

Findlay, Ohio.

Gentlemen:

We are writing you on behalf of both the Potlatch Oil & Refining Company and the Inland Empire Oil & Gas Syndicate in regard to the item Sunburst District Expense which has been appearing upon our monthly statements of Baker lease operations during the past four months.

It appears that instead of charging the actual field auto and trucking expense incurred on the Baker lease or in connection with its operation, you are now lumping all of the auto and trucking expense the Ohio Oil Company has in this district and are pro-rating all of this expense against the producing leases according to the number of producing wells. Under this arrangement, it is obvious that the lease having a large number of wells such as the Baker lease, is carrying much more than its rightful share of this expense, while other lands and leases having little or no production (but requiring supervision and hence auto expense just the same) are riding practically free of such charges.

We do not believe this is in accordance with

(Testimony of Jean P. Gerlough.)

Plaintiff's Exhibit O—(Continued)

either the letter or the spirit of our contracts with the Ohio Oil Company. [367] If this items of expense is continued thru the year as it has started, the auto and trucking expense for the year will be in the neighborhood of \$1000.00 or two and one-half times as much as this item has averaged during the past five years. This may be a convenient method of handling the auto and trucking charges for you, but it certainly is not fair to us. We are not interested in your other lands and leases and would prefer to pay only our just share of actual expenses on the Baker lease.

Trusting that this matter may be satisfactorily adjusted, we remain,

Very truly yours,

POTLATCH OIL & REFINING COMPANY and
INLAND EMPIRE & OIL & GAS SYNDI-
CATE.

By /s/ JEAN P. GERLOUGH,
Treasurer. [368]

(Testimony of Jean P. Gerlough.)

Plaintiff's Exhibit O—(Continued)

January 7, 1936.

The Ohio Oil Company,
Findlay, Ohio.

Gentlemen:

Referring to statement W-470-33 covering operations on the B. Sindon lease for the month of June, 1933.

In this statement thru an error in addition, and overcharge of \$100.00 was made against us. On January 30, 1934, we wrote to you calling attention to the error, requesting that same be corrected in the next statement rendered. Apparently no attention was paid to this request. Will you please make correction of the above \$100 error in the account so that our books will check with your statement.

We enclose a copy of the letter written you January 30, 1934.

Very truly yours,

POTLATCH OIL & REFINING
COMPANY.

Treas.

(Carbon copy.) [369]

(Testimony of Jean P. Gerlough.)

Plaintiff's Exhibit O—(Continued)

The Ohio Oil Co.

Findlay, Ohio

January 11, 1937.

Potlatch Oil & Refining Company,
First National Bank Building,
Shelby, Montana.

Gentlemen:

We are writing with reference to your letter dated January 7, regarding credit of \$100.00 which you state was not passed to your account as requested in your letter dated January 30, 1934.

Our records indicate this credit was entered on our records in January, 1934, and should be reflected on your copy of our Bill No. W-27-34 dated January 31, 1934. If after checking this statement you find this entry is not shown, please advise.

Yours truly,

/s/ W. J. SHEEHAN,

W. J. SHEEHAN.

WJS:GJ [370]

(Testimony of Jean P. Gerlough.)

Plaintiff's Exhibit O—(Continued)

Potlatch Oil & Refining Company

A Corporation

Offices: First National Bank Building

Shelby, Montana

December 30, 1935.

The Ohio Oil Company,

Findlay, Ohio.

Gentlemen:

We wish to call your attention to the charges made on our October 31, 1935, statement, Bill No. W-583-35 for casing and casing equipment used on the I. Sindon well #2, and to the credits allowed for this casing and equipment on the November statement, Bill No. W-641-35 after the well had been abandoned and the casing pulled.

The charge made for the 1778 3/12 feet of 65/8" 20# lapweld casing was \$1176.86 or approximately 67c per foot. The credit given for this same casing when pulled a few days after it was run appears to be only \$501.88 or approximately 28c a foot. We believe a fair credit for this pipe would be 62 1/2c a foot and in no event less than 60c a foot. There is a ready sale for such used pipe in the field at from 65 to 70c a foot and the pipe recovered was in first class shape.

A charge was made for the 999 9/12 feet of 8 1/4" 28# lapweld casing of \$1679.58 or \$1.68 per foot. Credit given on the November statement was for only \$349.91 or at the rate of only 35c a foot. We

(Testimony of Jean P. Gerlough.)

Plaintiff's Exhibit O—(Continued)

do not believe depreciation on this pipe should exceed 20% and that we should be credited back at the rate of approximately \$1.35 a foot for this [371] casing.

There does not seem to be any credit made for the 163 $\frac{3}{12}$ feet of 10-inch 32# casing charged to this well. Neither is any credit made for the $6\frac{5}{8}$ " and $8\frac{1}{4}$ " casing shoes for which a charge of \$29.71 was made. In checking the credit memoranda sent in to Findlay by the Shelby office of the Ohio Oil Company, it seems that these casing shoes were not included thru some oversight.

The total credits for casing, clamps, etc., on the November statement amount to only \$883.14 whereas total charges on the October statement were \$2992.61, the credits amounting to only $29\frac{1}{2}\%$ of the charges. We believe you will agree that some mistake has been made in figuring this out, and we trust that a fair and equitable adjustment will be made as soon as the above figures are brought to your attention.

Please advise us at your earliest convenience.

Very truly yours,

POTLATCH OIL & REFINING
COMPANY.

/s/ J. L. GERLOUGH,
Mgr.

(Photostatic copy.) [372]

(Testimony of Jean P. Gerlough.)

Plaintiff's Exhibit O—(Continued)

Findlay, Ohio

January 6, 1936

File G-13

Potlatch Oil & Refining Company,
First National Bank Building,
Shelby, Montana.

Attention: Mr. J. L. Gerlough, Mgr.

Gentlemen:

We acknowledge receipt of your letter of December 30 questioning apparent discrepancies on our bills No. W583-35 and W641-35 covering joint operations for the months of October and December, 1935.

We have forwarded your communication to our Casper office for consideration and reply.

Yours truly,

.....

CWR:WCM

c/c to Mr. L. M. Kiplinger

(Photostatic Copy.) [373]

(Testimony of Jean P. Gerlough.)

Plaintiff's Exhibit O—(Continued)

Return to D. N. Morrison

(Copy.)

ZJS

ROBERTS S

This is taken from L. M. Kiplinger 1936 file, Bx.
41-Pk 41

Casper, Wyoming
January 24, 1936

Potlatch Oil & Refining Company,
1st National Bank Bldg.,
Shelby, Montana.

Attention: Mr. J. L. Gerlough, Manager.

Gentlemen:

Your letter of December 30th addressed to our company at Findlay, Ohio, calling attention to charges made on our October 31, 1935, statement, Bill No. W583-35, has been referred to this office for reply as per letter dated from our General Office to you dated January 6, 1936, file G-13.

I will endeavor to give you explanation of the questions as raised by you in the same sequence as contained in your letter of December 30th.

I find on investigation that the charge for the 1778'3" of 6 $\frac{5}{8}$ " 20# lapweld casing was charged to your company at the rate of .66181 per foot, having been purchased from a supply company in Oilmont, Montana. In some manner or other when this pipe was credited to the I. Sindon Well No. 2 there was

(Testimony of Jean P. Gerlough.)

Plaintiff's Exhibit O—(Continued)

an appraised figure of 24c per foot used, but on contacting Mr. Yealy, who is in charge at Shelby, he advises that a fair charge should be at the rate of 60c per foot. Accordingly, in January business credit is being made to the I. Sindon Well No. 2 for the difference between the allowed price of 24c per foot and what should have been allowed at 60c per foot, as covered by our transfer #42148, which will mean an additional credit to this well of \$640.17. [374]

Regarding the charge made for the 999' 9" of 8 $\frac{1}{4}$ " 28# lapweld casing at \$1.68 per foot: This was transferred out of our warehouse as new pipe and we were in error in only crediting you on an appraised basis of 35c per foot. Mr. Yealy has agreed that a fair rate of depreciation for the use of the pipe at this well would be 20% as contained in your letter of December 30th. Therefore, reducing the pipe at \$1.66 per foot by 20% we arrive at the rate of \$1.344 per foot, which you should have received credit for instead of 35c per foot. Accordingly, we have issued transfer #42149 in January business, which will give you additional credit on this string of pipe of \$993.75.

Regarding the 163' 3" of 10" 32# casing charged to this well: This was charged to your account from our Warehouse at a price of 46c per foot, or a total of \$75.10, and you were allowed a like credit for this pipe on the November statement at 46c per foot

(Testimony of Jean P. Gerlough.)

Plaintiff's Exhibit O—(Continued)

or \$75.10, but you have evidently interpreted this \$75.10 as being a portion of the credit allowed you in November for the 1778' 3" of 6 $\frac{5}{8}$ " casing, as in your letter you state credit for 6 $\frac{5}{8}$ " was allowed in the total amount of \$501.88. If the statement so showed same, it is in error as the credit allowed for the 1778' 3" of 6 $\frac{5}{8}$ " at 24c per foot totaled \$426.78, and credit for the [375] 163' 5" of 10" casing totaled \$75.10, and the two amounts equal \$501.88 as contained in your letter of December 30th. The above explanation should take care of the discrepancies on credit allowed for the pipe.

Regarding the credit for 6 $\frac{5}{8}$ " and 8 $\frac{1}{4}$ " casing shoes I am advised by our Shelby office that these casing shoes were transferred away and credits should appear on our December, 1935, statement.

I believe with the explanations as given above and with the additional credits which we mentioned will be run through in January business this should take care of this matter to your satisfaction. We are very sorry that these corrections are necessary as it was not our intention to transfer this material on this basis but as stated above the transfers were priced on an appraised figure, it being assumed that it was old pipe which had been in the hole and just recently pulled out. If by chance the explanations as contained in this letter are not complete, we would be glad to have you address us

(Testimony of Jean P. Gerlough.)

Plaintiff's Exhibit O—(Continued)
at Casper, and we will endeavor to give you additional explanation.

Very truly yours,

/s/ L. M. KIPLINGER.

NLB:GF

cc—C. W. Roberts

H. L. Bottoms

V. B. McCracken

W. W. Haines

N. L. Battenschlag [376]

Potlatch Oil & Refining Company
A Corporation
Offices: First National Bank Building
Shelby, Montana

January 30, 1934

The Ohio Oil Company,
Findlay, Ohio.

Gentlemen:

In auditing our accounts for 1934, we find that on your statement of the B. Sindon Lease account for June 30, 1933, Bill No. W-470-33 you have made an error of \$100.00 in addition. In adding \$114.29 to \$15,026.24 you have \$15,240.53 instead of \$15,140.53. This error has been carried forward

(Testimony of Jean P. Gerlough.)

Plaintiff's Exhibit O—(Continued)

thru the year and the account is still off \$100.00.

Please correct on your next statement.

Very truly yours,

POTLATCH OIL &
REFINING COMPANY,

/s/ JEAN P. GERLOUGH,
Treas.

(Pencil notation.)

Interest credit of \$100.00 will be given on Jan.,
1934, Bill.

D.N.M. [377]

Potlatch Oil & Refining Company

A Corporation

Offices: First National Bank Building

Shelby, Montana

July 19, 1933.

The Ohio Oil Company,

Findlay, Ohio.

Gentlemen:

We wish to call attention to your statement of
May 31, 1933, Bill No. W-391-33.

This statement shows gas sold from the I. Sindon
lease during May in the amount of \$26.82 of which
our 45% amounted to \$12.07. This was overlooked
in summarizing the account where the item Income
showed \$14.45 instead of \$26.52 as it should have

(Testimony of Jean P. Gerlough.)

Plaintiff's Exhibit O—(Continued)

been, and our net credit should be \$641.60 instead of the \$629.53 which you paid.

Very truly yours,

POTLATCH OIL &
REFINING COMPANY,

/s/ JEAN P. GERLOUGH,
Treas.

(Pencil notation.)

This is corrected on our June, 1933, bill.

Wonder.

Write in reply to this letter Monday [378]
7/24/33.

(Carbon copy.)

Findlay, Ohio,
July 24, 1933.

Refer to File WG-571
Potlatch Oil & Refining Company,
First National Bank Building,
Shelby, Montana.

Gentlemen:

We are replying to your letter of July 19 regarding our Bill W-391-33 under date of May 31, 1933.

We detected the omission on our summary of your proportion of gas sold from I. Sindon lease and are pleased to advise that same will be included in our June billing.

Yours truly,

CWR:RP [379]